

United States
Circuit Court of Appeals
For the Ninth Circuit.

Transcript of Record.
(IN FIVE VOLUMES)

EBNER GOLD MINING COMPANY (a Corporation),
Plaintiff in Error,
vs.


ALASKA-JUNEAU GOLD MINING COMPANY,
a Corporation,
Defendant in Error.

VOLUME V.
(Pages 1513 to 1895, Inclusive.)

Upon Writ of Error to the United States District Court of
the District of Alaska, Division No. 1.

FILED

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(Testimony of Ed Webster.)

Q. Up the creek from your dam? A. Yes, sir.

Q. How far up the creek?

A. Well, I couldn't say really that distance.

Q. About how far? I am speaking now of the stake that Garside set there as part of the Crown Point. About how far would you say that was up the creek from your dam?

A. It is a pretty hard thing for me to say.

Q. I am not asking you to be positive, but about how far?

A. Well, it is within 100 feet or more up from the dam.

Q. The distance between the stake and the dam is from 90 to 100 feet—isn't that right?

A. Somewheres along there. It is quite a while since I have seen it.

Q. It is not exactly opposite the dam, up the hillside?

A. Our dam—it doesn't show here—our dam was right in here, somewhere right about in there.

[1392]

By the COURT.—Would that dam be shown on the plat from the land office?

Judge WINN.—I think not.

Q. Will you make a mark on this chart with a little circle where your dam was—make a circle on exhibit "N" at the point where your dam was in the creek.

A. I would say that that dam was right across the

(Testimony of Ed Webster.)

creek in there. I will make a circle there—of course, I am not sure of that.

Q. It would be relatively in that position—that is, the course taken from the dam to the post would be relatively the course indicated by you upon the plat there as being between the circle and the post as platted? A. Yes, sir.

Q. And the distance about from 90 to 100 feet?

A. Yes, I should say that.

Q. That is where you saw Garside put a stake—at that point you saw Garside put a stake?

A. Yes, I have seen the stake there.

Q. How was the stake marked, do you remember?

A. No, I do not.

Q. You know what kind of a looking stake it was?

A. Just a white stake.

Q. No legend on it at all?

A. I don't remember—there is lettering on it.

Q. But you don't remember what the lettering was? A. No.

Q. Garside set up his transit there at that point and then turned the angle there to go somewhere else?

A. That I couldn't say. I know they ran the line straight through from that way. [1393]

Q. What other stake of this Ebner group do you remember Garside putting in the ground?

A. That one there that is marked 6 and 2.

Q. 6 and 2 of what?

(Testimony of Ed Webster.)

A. Of the Webster Millsite.

Q. That has nothing to do with the Ebner survey?

A. They staked that—I didn't stake that, and they staked this one here.

Q. At that time Garside located a stake marked 2 there in a red circle, with a red figure, appearing on exhibit "N" as being the common southerly stake of the Webster Millsite and the Millsite lode—is that right? A. Yes, sir, and this one.

Q. And also located the stake appearing on the northerly end line of the Taku lode, at a point at the intersection of the Webster Millsite and the Taku lode? A. Yes, sir.

Q. You remember Garside putting that stake in?

A. Yes, sir.

Q. Now, that stake that Garside put at the intersection of the Webster Millsite and the Taku lode—do you remember the relative position of that stake? I am asking about the intersection stake of the Taku lode and Webster Millsite?

A. That was right, of course, what was supposed to be, on our line—they staked it right behind our cabin and they ran this line through here and I objected to them running this line—this was in plain sight, this was just right back of the cabin, on a little knoll?

Q. Is the cabin there yet? A. Yes, sir.

Q. It is there yet? [1394] A. Yes, sir.

Q. How far behind the cabin was the stake?

(Testimony of Ed Webster.)

A. About 50 feet, on a little knoll—it wouldn't be 50 feet; it was probably 40 feet from the cabin.

Q. How near the creek?

A. About 50 feet from where the bridge crossed the creek.

Q. About 50 feet away from the creek?

A. No, it wouldn't be quite that far; the creek takes a little turn in there.

Q. How far from the creek?

A. 40 to 50 feet—between 40 and 50 feet.

Q. And 40 feet behind your cabin? A. Yes, sir.

Q. And that cabin is still there?

A. Yes, sir; I have not been there for a few years. I suppose it is.

Q. And the stake is situated on the top of a little knoll?

A. Just on the side. There is a slope runs up the hill, up toward where he had his quarters and that stake was right there.

Q. Of course, you don't know whether any of these stakes on the ground now are in the same position? A. No; I can pretty near go to them.

Q. You don't know whether the stakes on the ground now are the same stakes you saw there?

A. No, I haven't been there since '98.

Q. Since '98 you have not been on the ground and know nothing about it? A. No.

Q. What other stakes of this Ebner survey do you remember Garside setting at that time? [1395]

A. That is all.

(Testimony of Ed Webster.)

Q. Just those three stakes?

A. Yes, sir, just those three stakes.

Q. Didn't you identify one as being located near the Thorp dam?

A. This is the one—Thorp had a dam above this.

Q. Is that dam there yet?

A. No, I don't think it is.

Q. You can't see that?

A. Ebner moved his dam away up above that.

Q. You wouldn't be able to see the Thorp dam on the ground where it had been?

A. I couldn't say whether it is there or not. I haven't been on the creek for a long time.

Q. But aside from that—you don't know anything about those stakes? A. No, sir.

Q. You don't know whether Garside ran the lines right or not? A. No.

Q. You only know that he ran them as surveyors usually run lines, with the use of a transit and tape?

A. He had his surveying instruments?

Q. And had his helpers with him?

A. Yes, sir.

(To follow the omission on page 260 of the original transcript [printed record, page 413] indicated by * * * , being part of the direct examination of Lloyd G. Hill (recalled), by Judge Winn.)

**[Testimony of Lloyd G. Hill, for Plaintiff
(Recalled).]**

Q. (Repeated.) Mr. Hill, are you well acquainted with the creek bed and the creek at or near Corner No. 2 of the Lotta lode claim? [1396]

(Testimony of Lloyd G. Hill.)

A. Fairly so; yes, sir.

Q. How long have you been well acquainted with the creek along there, just about that point?

A. I have been acquainted with the creek there for about ten years.

Q. I will ask you to explain in your own way the appearance of the creek-bed there, without being specifically examined on it, the width of it, etc.?

A. At that point, just at the bottom of the falls which are about opposite the present Ebner mill, the thread of the creek is, I should judge, at right angles with the flow of the stream. It is from 45 to 60 feet wide—that includes the creek and creek bottom, at high water it is all water. At low water it is just a small stream and gravel and sand on each side of the thread of the stream and right opposite this corner—that is, on the southeast side of Gold Creek at a point opposite corner No. 2 is what they call the waste dump where all the waste taken out of the mine is dumped over the precipitous side of the bluff and falls into Gold Creek.

Q. (By the COURT.) How far from that creek? Indicate where that dump is.

A. That dump would be about—I will mark it with four black lines, “dump.” That rock falling down into the creek-bed would have a tendency to throw the creek to the northwest.

Q. Throwing it to the northwest, would that throw it away from the corner No. 2 of the Lotta or towards the corner?

A. Toward the Corner No. 2 of the Lotta.

(Testimony of Lloyd G. Hill.)

Q. The ground, say from the southeasterly end of the Lotta lode claim down to the creek, you said the other day that it was somewhat precipitous—can you give a little better [1397] description of that ground there?

A. The surface of the ground extending in a northwesterly direction from stake No. 5 of the Lotta toward Gold Creek for a distance of about 250 feet is comparatively a gentle slope, and then the east side of the bluff of Gold Creek is encountered which is bare rock and stands on an angle of perhaps 65° from the horizontal. I have been over it several times and a misstep would mean that you would meet your death—you would fall clear down to the creek.

Q. I will ask you what about the practicability in running out that southwesterly side line of the Lotta of making an absolute measurement from corner No. 5 down to say the centre of the creek?

A. It would be very difficult. The most feasible way would be to jump over to the west side of the creek and then jump back again to the eastward into the creek, and then it would be very difficult because the west side of Gold Creek is in the same condition—it is absolutely impossible for any man to measure straight away along the Lotta line to the centre of Gold Creek with the methods that surveyors used 23 years ago—that is, 100 feet steel tape, steel chain, and tally-pins, if you had to plumb from the end of the chain.

(To follow the second omission of page 260 of the original transcript, [printed record, page 413] indi-

(Testimony of Lloyd G. Hill.)

cated by * * * , immediately following the words, "Cross-examination: By Mr. Hellenthal.")

Q. How wide is the canyon made by Gold Creek at the point of intersection with the southerly side line of the Lotta as you have it on exhibit "N"—from rim to rim at the bottom of [1398] the canyon, on a level with the creek where the water flows—how wide is the canyon there, from rim to rim?

A. That depends entirely at what stage you take the height of the water—at high water the canyon would be much wider than at low water.

Q. How wide would the canyon be at the highest stage of water?

A. I should say at right angles to the creek the canyon there would be fully 50 feet wide?

Q. At the highest stage of water? A. Yes, sir.

Q. The creek would then fill the canyon from rim to rim? A. Yes, sir.

Q. And the centre of the creek would be the centre of the canyon? A. It would; yes, sir.

Q. At the lowest stage of water how wide would the canyon be?

A. The canyon would be the same width.

Q. I am speaking from rim to rim on a level with the water—at the lowest stage of water?

A. It would be there about, I should imagine, 6, 10 or 12 feet wide.

Q. How high up perpendicularly is the highest stage of water from the lowest stage of water?

A. I don't know as I am qualified to answer that—it depends entirely upon the configuration of the

(Testimony of Lloyd G. Hill.)

bottom of the creek bed.

Q. Where does the creek flow at the lowest stage of water?

A. The creek is changing almost continuously.

Q. How far does it change?

A. It would change within the bed of the ravine.

[1399]

Q. How wide is the bed of the ravine?

A. I have said the bed of the ravine is between—at that point you are speaking about—I should judge, about 60 feet wide, between 50 and 60 feet.

Q. It is not over 60, anyhow?

A. I think not, at that point.

Q. Is it not a fact that when the water is low the creek generally runs about the middle of that bed?

A. No, not necessarily.

Q. Isn't that where it runs out generally and shifts around—runs about the middle there, does it not?

A. Yes, it runs more to the right—it has a tendency to cut into the southeast bank at low water.

Q. But the bank—the walls of this canyon, are rocky?

A. That is the wall on the southeast side.

Q. What is the wall on the other side?

A. The other wall is slide rock, gravel, all sorts of stuff—there is no bedrock there.

Q. It is slide rock all along the edge there and you have seen it in the same condition ever since you have been in the country?

A. Yes, on the northwest side.

(Testimony of Lloyd G. Hill.)

Q. The canyon has been the same width ever since you have been in the country?

A. Practically so, yes, sir.

Q. Is it not a fact that at the centre of the stream at that point is about now where it was when you first saw it and is always about the same place, and is always the same place at high and low water?

A. The creek at the intersection—yes, I judge it is. [1400]

Q. The water goes up and down the different seasons, but the centre is the same, whether at high or low water?

A. It would average from year to year.

Q. It shifts a little from year to year—there is a little sand in the bottom?

A. Yes, there is some rock.

Q. At the corner, near Corner No. 2 on the Lotta, how wide there is the Basin from rim to rim? I am speaking of the bottom of the canyon where the creek flows.

A. You want to apply this to the different elevations of the water?

Q. I am speaking now of the bed, at the bed of the creek, immediately above the water at its average stake—you understand what I mean?

A. I think I do.

Q. How wide is the canyon there?

A. The canyon there, I should say, was about 60 feet, at right angles to the flow of the creek.

Q. At that point where is the creek flowing at this time—about the centre?

(Testimony of Lloyd G. Hill.)

A. At that point at the present time where is the creek flowing?

Q. Yes.

A. No, I think it is not. I think the creek has been shifted out of the position as given by the old survey and is thrown off more to the northwest.

Q. Moved a little way from the centre?

A. Yes, sir.

Q. It is not quite in the centre there? A. No.

Q. Where is it now with reference to the northerly bank—how [1401] close to it is it?

A. It is pretty close to the northerly bank. I couldn't say just how far.

Q. At high water how wide is the creek at that point?

A. Well, I don't know, as you ask me the question. At the normal stage of water I said 60 feet; at high water it would be somewhat wider.

Q. You don't mean to say the creek is 60 feet at the normal stage of water there do you?

A. No.

Q. How wide is the creek?

A. The creek is probably 35 feet wide there, perhaps 40.

Q. How wide is the creek at high water?

A. The creek would be wider at high water.

Q. How much wider? A. Perhaps 55.

Q. It would be perhaps 55 feet at high water?

A. Yes, sir.

Q. In other words, at high water the creek would fill the canyon from rim to rim—about fill the bottom

(Testimony of Lloyd G. Hill.)

of the canyon from rim to rim?

A. It depends where you start the canyon.

Q. The edge of the creek at one side would strike the rim of the canyon and the edge of the creek on the other side would strike the other rim of the canyon at high water?

A. The bluff at that point comes down very sharply on the east side of the creek. The west side of the creek bears off more and wouldn't be called a canyon at all there—the creek would have a chance to move there in that direction. It is not rock, that is slide rock and gravel, and the creek would [1402] work over that way quite a ways, to the north and west.

Q. How far could it work over?

A. It could work over—I wouldn't attempt to say—it could work over 30 feet—25 or 30 feet.

Q. The creek at that point at this time is how near the bank or near the rim of the canyon at this particular point—at this time, I mean the average stage of water, as it was last year?

A. How far is it from the creek to the bank?

Q. Yes—on the west side?

A. Well, there isn't much down in between there; it is practically up to the bushes and slide rock in there and forming quite an eddy. It was that way last fall. I haven't seen it during the winter.

Q. Have you been up to this place since you testified here last? A. Yes, I was up there.

Q. When were you up to that point? Up to the point where stake No. 2 of the Lotta stands?

(Testimony of Lloyd G. Hill.)

A. I was up there yesterday afternoon—yesterday morning.

Q. Is that canyon full of snow?

A. Yes, there is a slide came down there.

Q. You can't tell anything about the bottom of the canyon?

A. Can't tell very much about it, no.

Q. You didn't go down there to measure it?

A. Yes, I went down.

Q. But you couldn't measure it? A. No.

Q. You remember testifying here the other day that that point in the canyon was 25 feet wide?

[1403] A. No, I don't recollect that.

Q. If you so testified that was not true?

A. At that point the canyon was 25 feet wide?

Q. Yes.

A. At that time, if I testified to that, I must have been mistaken.

Q. You testified also, I think, that the general average in there of the canyon, general average of the entire canyon along there, was about the width of 25 feet, all along the line?

A. I didn't testify to that. I said between 25 and 40 feet. I remember the testimony very well.

(Above testimony represents all the omissions in the original transcript in the testimony of the plaintiff.) [1404]

Defense.

**[Testimony Omitted from Original Transcript,
Introduced by Defendant.]**

The testimony omitted from the original transcript, introduced by the defendant, is as follows:

[Testimony of B. D. Stuart, for Defendant.]

(To follow the first omission on page 771 of the original transcript [printed record, page 964] indicated by * * * , being part of the direct examination of B. D. Stuart by Mr. Hellenthal.)

Q. (Repeated from bottom of page 770.) I will ask you to state to the Court what you did in the fall of the year 1910 looking toward the location of that creek upon the ground?

A. The first thing I did was to make a traverse line down the road which is shown on the map as a sinuous double line.

Judge WINN.—Run along your traverse line.

The WITNESS.—I have only a portion of the curve—I have not located them all on the map. I began at my station #93 where I put my pointer and the next station on the Lotta was at 94.

Q. Are those indicated on the map?

A. They are indicated on the map by small black circles and the number of the station beside the circle.

Q. And the points you are pointing at are indicated in that manner on the map, all of them, the stations?

A. Yes, sir. The next point is marked 95 and the next one 97 near the border. I ran the traverse between those points just merely in connection with the location of this portion of the creek, and from station 95 I ran down to station at 120, on the bank above the creek, down to the creek at a point

(Testimony of B. D. Stuart.)

similarly marked for a station and numbered 107. From there I ran up the creek, locating the points which are indicated upon the banks of the creek upon [1405] the map by small red circles, that is, the definite point I measured to on the creek are indicated in that manner, up to what is marked Station 131, near what is presumed to be the north-east corner of the Lotta claim. Then having run up to station 131 and setting up there, I made a closed loop to my traverse by measuring back to station 93, I might explain that there are two ways by which I can check my traverse, by retracing the line which I have run and by running a loop and arriving back at the same point I started—if I arrive at the same point, it checks my traverse and I know it is correct. Another method would be by triangulation, measuring the base line and occupying each of the forks of the triangle at the station and the base line being one side of that triangle and measuring the angles between the lines of the triangle in that manner; for instance, I had for the base line in this instance, I had from station 95 to 97, which I measured very carefully; then I triangulated to what is marked for Corner 5 of the Lotta and occupied as a transit station each of the points marked 95, 97 and 5, the point indicated as the Lotta claim on the ground. If the sum of these angles equals 180° it is a check on the work and the result was 180° for the measurement of the angles. In connection with the traverse I ran down the road and around up the creek in order to locate the creek; in closing back on my

(Testimony of B. D. Stuart.)

station point—I might say that traverse was about 2000 feet or 2500 feet long—in closing back on my original point, I closed within $\frac{3}{10}$ of a foot, so I am absolutely sure the creek is correct as indicated there within the boundaries of the Lotta claim; I located I believe it is 28 or 30 [1406] points between stations 107 and 131, 28 or 30 points along the bank of the creek.

Q. Did you locate one side or both sides of the creek.

A. Some points are on one and some on the other. With reference to the way I obtained the relation between this creek, as I have explained, and the side line of the Lotta, the corner which is marked with a black circle upon line 5-6 of the Lotta—it is presumably upon that line but it is not quite; there is a stake which marks the intersection of the Forrest patented lode claim with this supposed side line of the Lotta. I included that stake in my traverse as a station, so that it checks the position of that stake with reference to the road and with reference to the creek. From the points on the same traverse 95 and 97 I located Corner 5 of the Lotta and checked it in the manner I have stated, so that I know that line is correct with reference to the creek.

Q. When you say Corner 5, what do you refer to?

A. I mean a stake in the ground marked for that corner. I don't know that there is anything further. Do you want me to explain about the other stakes of the Lotta?

Q. That is all the surveying you did in connection

(Testimony of B. D. Stuart.)

with getting the relation of the creek to the supposed west side line of the Lotta,—that is all the surveying you did with reference to the creek?

A. No, it is not. The definite points I located on the creek below the Alaska-Juneau dam, which is marked Alaska-Juneau dam on the map where I have my pointer, are not indicated upon this map, merely those that are within the Lotta and near the boundary, but I located the creek in almost as [1407] careful a manner, not quite so particular about it, though.

Q. For the entire distance shown on the map?

A. Yes, sir.

Q. And you can testify that the creek is indicated and platted on that map, is correctly platted there from an actual survey you made?

A. Yes, sir, I can. I checked over the position of these points.

Q. And it is so platted?

A. It is so platted; yes, sir.

Q. What other lines did you run up there in connection with the making of these surveys? Please explain fully.

A. All the rest of the work upon this map was done by means of traverse lines. I closed in the manner I have stated wherever I possibly could.

Q. By actual survey did you establish all the matters and things indicated on the map?

A. No, I did not. The corner posts are the posts I found in the ground, as they are upon the ground now—I have indicated upon the map by means of circles at the particular corners. That includes

(Testimony of B. D. Stuart.)

also this red claim, the Canyon claim—the corners I found in the ground are marked with circles in connection with the rest of the work. Wherever a circle is not found it indicates that line was merely drawn in from other data.

(To follow the second omission on page 771 of the transcript originally written, [printed record, page 964] being part of the direct examination of Mr. H. D. Stuart by Mr. Hellenthal.)

Q. What did you find upon the ground in the way of a stake that is marked as stake No. 5 of the Lotta? [1408]

A. About the corner that was marked for corner No. 5 of the Lotta was a small stake, 2x3 inches it measured and marked—I believe, as near as I can remember, it was marked U. S. S. No. 87 on one side and post No. 5 on the other side.

Q. What did you find in the way of a stake along the line marked on this plat Lower side line of Lotta, as claimed by the Ebner Co.—what did you find along that line in the way of a stake except the stake you have described as being marked for Corner No. 5, other than that stake?

A. Just alongside the road, the Basin road, I found a corner post or a post at the end of a small bridge. It was marked Corner 4, Forrest lode.

Q. Did it have any legend upon it in connection with the Lotta?

A. I believe it was marked S. 87 on one side—nothing further than that.

Q. What else did you find along that line in the way of stakes?

(Testimony of B. D. Stuart.)

A. Above the Basin road, that would be northwesterly from the Basin road, but above the new high line flume, I found a stake which measured 5x5 inches and I think had been painted white at one time, and was inscribed.

Q. How was that inscribed?

A. It was inscribed, I believe, U. S. S. No. 545, Corner #2, and then on one side also it was inscribed S. 87—that is as near as I can remember the marking.

Q. Do you know what survey number that was—what survey was indicated by it?

A. 545—I believe that is the Dora group.

Q. Do you know the name of the claim?

A. The Etta.

Q. Did you see any other Etta stakes on the ground? [1409]

A. I saw one that was marked for the Etta survey; yes, sir.

Q. What kind of a survey was that and how did it compare with the stake you found on the corner of the Lotta as indicated on the ground?

A. Which corner of the Lotta?

Q. I mean how did the stake, that other stake you found, compare with the stake that you found in the ground at a point where Corner No. 6 of the Lotta would fall according to the line indicated on this plat as the lower side line of the Lotta as claimed by the Ebner Co.—how did those two stakes compare?

A. Just north of the Basin road again, a foot or so, as I remember, north of the road as platted here on

(Testimony of B. D. Stuart.)

the map, I found a small stake which compared. I think it was a scant 4x4 and standing about seven or eight inches above ground.

Q. That is one of the Etta stakes?

A. Yes, marked for Corner 1 of the Etta.

Q. What kind of a stake was that with reference to the stake you found at the other corner?

A. It was smaller and seemed to be a much older stake. I judge it was a much older stake from the markings—it wasn't inscribed; it was marked "pink"—it was cut in.

Q. It was a newer stake?

A. Yes, it seemed to me so.

Q. What was the condition of Corner No. 5, of the stake marked No. 5 on the ground, as to being set in the ground or nailed to another stake?

A. It was set alongside of another stake. The other stake, I think, was nailed to it when I was there. The stake it is nailed to is similar in character to the stake that is set [1410] for Corner No. 2 of the Etta, which is supposed to be identical with corner 6 of the Lotta—the stake it was nailed to was the same character as that. The corner itself which was marked with black paint was marked for Corner No. 5 of the Lotta, a much smaller stake, shorter and different from it in every way.

Judge WINN.—The one it was nailed to, do you mean?

A. No, the one that is marked and was nailed to the other one is a much smaller one and apparently different.

(Testimony of B. D. Stuart.)

Q. What was the character of the stake you found at the intersection of the Forrest?

A. I believe that was about 5x5 inches.

Q. A square stake? A. A square stake; yes.

Q. Is that the same character of stake you found at No. 6 and 5 of the Lotta?

A. In general appearance—it is the same sort of a piece of timber.

Q. How does it compare with this piece of timber at Corner #6 in reference to age?

A. In a general way, I should say—it seems to me that they were pretty close to the same age, the same state of preservation.

Q. What other stakes did you find upon the ground there?

A. Up the hill from the post marked for Corner No. 5 of the Lotta I found two stakes which were set on the steeper hillside above.

Q. How were they marked?

A. One was in the neighborhood of 145 feet, or something like that, above Corner #5, in a northeasterly direction, say a 2x3 stake and marked U. S. S. No. 87, Post No. 4. [1411]

Q. Where is that one?

A. About 145 feet, a little northeasterly, from that Corner No. 5 of the Lotta.

Q. Can you give the exact measurement of those stakes as they were at that time?

A. The distance was 144.92 feet.

Q. What else did you find in running the stakes on that ground?

(Testimony of B. D. Stuart.)

A. I found another post, 2x3 inches, 140 feet beyond the one marked for Corner No. 4.

Q. Which map are you testifying from?

A. I just got the distance from this other map.

Q. What else, if anything, did you find in the way of stakes upon the ground there?

A. You mean with reference to the Lotta?

Q. I mean with reference to the Lotta—did you find Corner #1?

A. Nothing further than this little corner marked for Corner 1 of the Etta, which is presumed to be what the patent notes called for—it would be identical with Corner No. 1 of the Lotta.

Q. How was it marked?

A. I couldn't make out any Lotta markings on it. The post had been broken off and rusted in the ground—the post had been evidently broken off.

By the COURT.—Corner 1 of the Lotta—you mean stake?

A. I mean stake No. 1. It is a post described in the patent as being Corner No. 1—that is the way it is described in the patent.

Q. Did that stake have any Lotta markings on it?

A. I could make none out of it.

Q. What distance is that from stake marked No. 6—that had [1412] the Ebner markings on it?

A. 141.3.

Q. What is the distance between that stake you last spoke of and the stake 6 marked for the Etta, also for the Corner #6 of the Lotta?

A. 141.3 feet.

(Testimony of B. D. Stuart.)

Q. You found no other stakes upon the ground that indicated or that were marked as Lotta stakes or that were anywhere near where the Lotta stakes ought to be? A. I did not, no.

Q. Are you familiar with the notes in the patent of the Lotta? A. I have read them over; yes, sir.

Q. Are you familiar with the plat included in the patent? A. Yes, sir.

Q. What is the distance between the stake that is marked as Corner 5 and the stake marked Corner #6 as you have described them—the total distance?

A. 1524.7 feet.

Q. What is the course—the course of that line?

A. It is about north 31–38 west—that is, beginning at Corner No. 5. From Corner No. 5 to Corner No. 6 there is a break in the line as indicated by the posts on the ground.

Q. There is a break in it?

A. A slight break, yes. The post which marks the intersection of the Forrest lode with the Lotta lode is not quite on a line with the post for No. 5 and the post for No. 6.

Q. How much is it off the line?

A. It is in the neighborhood of a foot and a half, I believe. I don't remember exactly.

Q. But ignoring that corner, that post rather, the course you have indicated is the course between the two stakes? A. It is; yes, sir. [1413]

Judge WINN.—I understand Mr. Stuart is giving the actual course as he made it.

Mr. HELLENTHAL.—As he found it on the ground between the stakes.

(Testimony of B. D. Stuart.)

Judge WINN.—Not as the survey shows.

A. No, as I determined it—

Q. From actual surveys made on the ground?

A. Yes. I determined the course by solar observation.

Q. Now, what is the course between Corner No. 5 as it is marked on the ground and Corner No. 4?

A. North 58-22 east.

Q. And what is the distance? A. 144.9 feet.

Q. What is the course between 3 and 4?

A. North 57-55 east, 140.3 feet.

Q. Those two courses don't compare?

A. There is a very slight difference. In measuring to those posts I set a small nail in the center of the post and measured to that nail and if the post leaned a little bit one way or the other it might make that difference in the course.

Q. About the stake No. 6, the Etta stake—how far is that from No. 1 stake as it exists upon the ground?

A. The course is 56-50 east 141.3 feet.

Q. How do the courses you find you have to run upon the ground between these different stakes compare with the courses given in the patent notes?

A. They are all different.

Q. How different are they?

A. In the neighborhood of 2°. I believe on the west side line of the Lotta I found 2° 12' between Corner #5 and the corner [1414] of the Forrest.

Q. How much is the difference in the other course?

A. You mean down to the minute?

Q. Yes; between Corner No. 3 and Corner No. 5.

By the COURT.—You are speaking now of these

(Testimony of B. D. Stuart.)

posts that he found, that have been spoken of heretofore?

Mr. HELLENTHAL.—I am speaking of the posts that are on the ground.

By the COURT.—The posts that have been testified to by the plaintiff?

Mr. HELLENTHAL.—The same identical posts.

The WITNESS.—A degree and 55' from Corner 3 to Corner 5.

Q. The variation then is not the same between the two courses? A. Not quite.

Q. The angle is different?

A. A little different; yes, sir.

Q. What is the distance between stake No. 5 marked upon the ground and the center of the creek?

A. 560 feet.

Q. What is the distance between the point where Corner No. 2 would fall, if the Number 1 and 6 as found upon the ground were assumed to be in a correct position to the creek?

A. 965 feet. I give those figures in even feet.

Q. Corner No. 2 I am speaking of, and the centre of the creek—what is the distance between Corner 6 and the creek? A. 965 feet.

Q. What is the distance between corner 2 and the creek, assuming that the stakes 1 and 6 are in the correct original position—what is the distance between the point where No. 2 would fall and the centre of the creek? [1415]

A. It scales 82 feet.

By the COURT.—You didn't find Corner 2—you

(Testimony of B. D. Stuart.)

didn't find a stake? A. No, sir.

Q. Explain that—how you got that corner.

A. I drew a line from the point marked Corner 1 of the Lotta parallel to the end line 3-5 of the Lotta and gave it the distance which is called for in the patent, 150 feet.

Q. How does the easterly side line compare with the westerly side line in length as indicated upon that map? A. Approximately the same.

Q. What is the condition of that southerly or westerly line of the Lotta? Explain to the Court whether it is a difficult matter to survey that line or a difficult matter to plat the creek.

A. I don't consider it so; no, sir.

Q. Is there any difficulty anywhere in measuring the distance between stake No. 5 and the creek?

A. I don't consider it is difficult; no, sir.

Q. Now, do you have the measurements between stake No. 3 and stake No. 5 as found upon the ground, without reducing them to a horizontal?

A. I haven't that here. I have my notes and can get that for you.

Q. You are familiar with the notes as given in the patent? A. I am; yes, sir.

Q. If you follow the notes as given in the patent, assuming the creek to be in the correct position that you have testified it is, will you tell the Court where the Lotta claim would lie?

Judge WINN.—We object to that as incompetent, irrelevant and immaterial. Objection overruled. Plaintiff allowed an [1416] exception.

(Testimony of B. D. Stuart.)

Q. I am calling your attention, now, to the plat marked for Identification Exhibit No. 6, and ask you if you will indicate to the Court where the Lotta claim would lie if platted and surveyed according to the field-notes—in accordance with the field-notes and the plat contained in the patent to the Lotta claim.

Judge WINN.—I don't think that was in the former question. I make the same objection and add that the plat made in the record-book as being a part of the patent is not the plat that controls in the patent at all, that the certified copy from the surveyor general's office is the one that controls. Objection overruled. Plaintiff allowed an exception.

A. The position it would be given by the ties as you have explained are indicated on Defendant's Exhibit No. 6 in red—the red rectangle, with the courses and distances marked on it.

Q. I will ask you to explain to the Court how and why you so locate the Lotta upon the ground with reference to the note as given in the patent—explain the whole matter carefully, why it is done that way and the way it is done.

Same objection. Objection overruled and plaintiff excepts.

A. The distance as given in the patent from Corner No. 5 of the Lotta to Gold Creek on that map accompanying the patent is 1200 feet—the distance from Corner No. 2 is given as 40 feet.

Q. What is the course given in the patent?

A. The course of the side lines—that is marked

(Testimony of B. D. Stuart.)

incorrectly here—it should be North 34–35 west and south 33–45 east for the side lines, with a distance of 1500 feet. The course of the end lines is northeast and southwest 56–15 and the [1417] length is 300 feet.

Q. Explain what the claim is tied to in the patent.

A. The distances are given to the creek and the rectangle in red on this exhibit was put on in accordance with those distances to the creek from the corners and in accordance with the courses and distances given in the patent for the side and end lines.

Q. Are there any ties in the patent notes other than the creek? A. Not for the Lotta claim.

Q. Now, is there any other place on Gold Creek, along its entire course, say from mineral monument to where it flows into Gastineau Channel, where that claim can be located and tied to the creek in the manner indicated by the patent, other than the place where you have located it upon your plat?

Judge WINN.—I object to that as incompetent, irrelevant and immaterial, too general in its nature, and assuming something that I think Mr. Stuart himself will not contend for—that a call to the natural object is a tie for the survey.

Objection overruled. Plaintiff allowed an exception.

Q. As a surveyor, do you regard those calls or ties whatever they are to the creek, as ties?

A. I do, taken together—there are two ties from the corners to the creek, and if those ties were cor-

(Testimony of B. D. Stuart.)

rect, the claim could lie in no other position than I have given here.

Q. You may now answer my question that Judge Winn objected to—you have practically answered it but the answer given is not responsive to the last question. Could the claim be located at any other point on Gold Creek and tied to the creek in accordance with the notes and plat contained within [1418] the patent, preserving the courses and distances given in the patent—could the claim be located at any other point on Gold Creek, other than the point at which you have located it on exhibit 6?

Same objection. Objection overruled. Plaintiff allowed an exception.

A. I would say yes, so far as I know Gold Creek.

Q. Could it be located at any other place—yes or no?

A. I think not. I would like to explain that answer. I will state to the Court that the creek at this point has a course which, I believe, it has not at any other point throughout the length of it—that I know, turning as it does in its course through the Lotta claim. The rest of the creek, I do not believe there is any other reach of that length which would allow of the claim being tied to it in the way it is tied in the patent notes.

Q. I will confine the question to the part of the creek you have surveyed. I will ask you if it could be tied to any part of the creek that you have surveyed, between Cape Horn or between the Ebner mill and Snowslide Gulch? A. No, sir.

(Testimony of B. D. Stuart.)

Judge WINN.—I move to strike the answer of the witness to the former question, as it was not shown that Mr. Stuart was sufficiently familiar with the creek to answer a hypothetical question of the kind propounded.

By the COURT.—The answer is in without objection. Motion denied. Plaintiff allowed an exception.

Judge WINN.—Now, I object to this last question and answer on the same grounds.

Objection overruled. Plaintiff allowed an exception. [1419]

Q. My question this time is, is it possible to locate the Lotta claim as described in the patent field-notes and plat upon that creek, tied to the creek as they are described, at any other place between the Ebner mill and Snowslide Gulch other than the place at which you have located it and indicated by your red lines?

Same objection. Objection overruled. Plaintiff excepts.

A. I should say it is not.

Q. I mean the red lines on exhibit No. 6?

A. I should say it was not possible.

Q. I hand you a piece of cardboard and ask you to take that and use it and explain to the Court the reason why it is not possible to locate that claim in any place except the place at which you have located it.

Objected to as cross-examination of their own witness.

(Testimony of B. D. Stuart.)

Objection overruled. Plaintiff allowed an exception.

A. This piece of cardboard I made for convenience. It is made to conform to the size and shape of the Lotta claim as called for in the patent, and I have marked the corners on the cardboard to conform to the corners as they are in the Lotta.

By the COURT.—It is made on a scale?

A. On the same scale as that map, 50 feet to the inch, and upon it I have also marked off the ties to the creek as given in the patent. (The cardboard is marked Defendant's Exhibit No. 26 and admitted in evidence.) Now, putting the cardboard, so that the boundaries of the cardboard conform to the Lotta lines on the exhibit, the ties to the creek on the two corners mentioned fit—

Q. Do you want to use the protractor? [1420]

A. No, I do not. Now, maintaining the cardboard in a position parallel with the lines of the Lotta as indicated in red on the exhibit, if the cardboard is lowered and the tie of 40 feet from Corner No. 2 to the creek is maintained, the point 40 feet from the Lotta falls below the creek; and in the same way, if the distance of 1200 feet is maintained from Corner No. 5 of the Lotta and the distance of 1200 feet is maintained there and that point is kept upon the creek, and the cardboard maintained in the position parallel to the Lotta lines, the other intersection falls out of the creek entirely. That is the only position that that cardboard can lie—the positions indicated by the red lines is the only position in

(Testimony of B. D. Stuart.)

which the cardboard can lie and make both ties conform to the notes.

Q. Now, Mr. Stuart, are you familiar with the field-notes of the Lotta that are found in the U. S. Surveyor General's office, and in evidence here?

A. Yes, sir, I am.

Q. Is the Lotta claim tied to anything by those notes? A. To the creek.

Q. I hand you here a map marked "B," which purports to be a certified copy of the official plat as found in the surveyor general's office of the surveyor general at Juneau. Are you familiar with the notes as given in that plat? A. I believe I am.

Q. Are you also familiar with the notes as given in the surveyor general's office, independent of the plat and field-notes? A. Yes, sir, I am.

Q. Those field-notes—to what do they tie?

Objected to as not the best evidence. Objection sustained. [1421] Defendant allowed an exception.

Q. Are you familiar with the field-notes of the Lotta in the surveyor general's office?

A. I have read them over. I think I am familiar with them.

Q. What, if any, ties to natural objects or permanent monuments is found in those field-notes?

Judge WINN.—We object to that as incompetent, irrelevant and immaterial and there is no foundation laid for the witness to answer the question. It is not the best evidence, and furthermore, it appears from all the evidence in this case up to the present

(Testimony of B. D. Stuart.)

time that the surveyed Lotta includes a survey of a group of claims and is treated in law and in contemplation of the rules and regulations of the surveyor general's office as absolutely one survey—to segregate one claim that way is unfair.

Objection overruled. Plaintiff allowed an exception.

A. I believe it is tied to the creek.

Q. What are the courses and distances given to the creek?

A. The courses given are the same as given in the patent. The distances are different; that distance from Corner No. 5 to the creek, being a thousand feet instead of 1,200 feet, and that distance from Corner No. 2 to the Creek being 50 feet instead of 40 feet.

Q. Now, I will again hand you this cardboard, to lie upon this plat, upon the map exhibit 6, and tell us the only place where the Lotta claim could lie in accordance with the field-notes of the surveyor general's office and the plat I have handed you, which purports to be the official plat of the survey of the Lotta?

A. I have it drawn on the other exhibit but not on this.

Q. Exhibit No. 7? [1422]

A. It is marked on the exhibit 7 in blue ink. It is the only rectangular claim in that vicinity which is marked in blue ink. I find the position of it the same way—I find the position in connection with the notes of the patent,—the position of it would be that

(Testimony of B. D. Stuart.)

which the cardboard maintains at the present time.

Q. What cardboard is this?

A. The outline of the cardboard is the same as indicated in the lines with blue ink.

Q. Is there any possible position that the claim could be located, in accordance with the surveyor general's field-notes and plat, observing the ties and courses and distances and ties to natural objects and permanent monuments, other than you have indicated on Defendant's Exhibit Number 7?

Judge WINN.—We object to the question as incompetent, irrelevant and immaterial, and for the further reason that there is not any tie in the field-notes of the Lotta claim, of the survey of the Lotta claim, that ties it to the creek. The only tie of the Lotta is the tie that is made to the group of claims; that was all surveyed under one order of the surveyor general, and always treated as one survey, consisting of the Lotta, Taku, Keystone, Crown Point, Golden Fleece, Grand Review and Jewel, and that it plainly shows from the survey that that survey is treated as one survey and shows from the official map and plat that the witness is testifying from, that the group of claims is tied up to a United States government monument.

Objection overruled. Plaintiff allowed an exception.

Mr. SHACKLEFORD.—So that there may be no mistake about the appearance of the plat at the time witness is examined, we [1423] desire to call the attention of counsel and the Court to the course

(Testimony of B. D. Stuart.)

given from Corner No. 5 to the creek of one thousand feet and to the course given from Corner No. 2 to the creek of 50 feet as platted on Plaintiff's Exhibit "B."

Q. You may answer my last question.

A. I believe not.

Q. Will you explain to the Court why?

Objected to for the same reason. Objection overruled. Plaintiff allowed an exception.

A. The same explanation as in the case of the notes that are given in the patent.

Q. I will ask you where the southerly side-line of the Lotta would fall if you observed the ties to Gold Creek given and indicated in the patent to the Lotta and maintain the courses or maintain the course rather that you are obliged to follow in going from the stake No. 5 to the stake marked No. 6 as found upon the ground?

A. I think I understand your question all right.

Q. I mean, if you draw the line parallel with the line marked lower side-line of the Lotta as claimed by the Ebner Company to be along the line as marked on this map, lower side-line of the Lotta as called for by patent tie to creek, or the end-line as claimed by the Ebner Company to run parallel to the end-line as determined by the stakes in the ground?

A. It is the line so marked upon this exhibit.

Judge WINN.—Define it.

A. It is in black ink—that is the line that is indicated, the lower side-line.

Q. How many feet above the lower side-line of the Lotta would that line fall—that is, how many feet

(Testimony of B. D. Stuart.)

above the line [1424] drawn between the stakes marked 5 and 6 as they are found upon the ground would that line fall? A. It scales 122 feet.

Q. It would throw the side-line up the creek that distance? A. Yes, sir.

Q. Now, I will ask you to examine the patent notes of the Lotta, and inform the Court whether the Lotta claim is tied to anything other than the creek?

Judge WINN.—We object to that as incompetent, irrelevant and immaterial and as a conclusion of law, and he has already answered it once or twice.

Objection overruled. Plaintiff allowed an exception.

Q. I will ask the question this way: I hand you here the exhibit marked "B," which purports to be a certified copy of the patent of the Lotta and some other claims, and ask you to look at it and explain to the Court to what the Lotta is tied in accordance with the notes and other data given in that patent in the way of natural objects, permanent monuments or other things that may be found upon the ground.

Judge WINN.—We object as incompetent, irrelevant and immaterial. The paper is the best evidence, the patent.

Objection overruled. Plaintiff allowed an exception.

A. In the notes to the patent itself I don't see any tie. The only ties indicated on the Lotta claim on the map are ties to the creek.

Q. In the notes in the patent itself you find no tie whatsoever? A. No, sir.

(Testimony of B. D. Stuart.)

Q. What do you find in the plat that is part of the patent?

Same objection. Objection overruled. Plaintiff excepts.

A. Just distances given from the corner to the creek. [1425]

Q. Those are the same distances you gave before?

A. They are; yes, sir.

Q. There are in that patent no other ties to which the Lotta is tied? A. I find none.

Q. Do you know the magnetic variation given in that patent?

A. I believe it states 30° east of north.

Q. Is that the correct variation as you find it at this time? A. It is not; no, sir.

Q. Did you make a solar observation? A. I did.

Q. What did you find the magnetic variation to be at that time?

A. The time I made my solar observation at corner No. 5 of the Lotta I found the magnetic variation to be, I believe, $32^{\circ} 30'$.

Q. A difference of how many degrees?

A, 2° and $30'$.

Q. Have you any means of knowing what the magnetic variation was at the time the survey was made?

A. The only means I would have would be from scientific text-books or charts or something of that kind.

Q. Does the magnetic variation change from time to time?

A. The variation doesn't change, but referring to

(Testimony of B. D. Stuart.)

the declination, the declination changes, yes, sir.

Q. Does that make any difference in the variation?

A. The variation is the change in the declination.

Q. Explain that.

A. The declination is the angle which the magnetic meridian bears to the true meridian—that is the declination. It is very often referred to as the variation, but really the variation is the change which takes place in that angle, [1426] between the magnetic meridian and the true meridian; the declination changes with the time, with the place—changes on the same day as much as fifteen minutes sometimes at the same place.

Q. It is not constant.

A. It is not constant, no, sir; and the variation which this declination is subject to also fluctuates.

Q. With the declination? A. Yes, sir.

Q. So there is no way of telling at this time what the magnetic declination or variation was at the time the survey was made?

A. I have no means of determining it; no, sir.

Q. Explain to the Court the difference between running a line with a transit and with a compass.

Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Plaintiff allowed an exception.

A. In making a survey with the compass, the meridian used and from which the angle is deflected is determined by means of a magnetic needle which does not point to the true north, but a certain angle

(Testimony of B. D. Stuart.)

from the true north. By means of the transit the meridian may be determined either by means of the needle attached to the transit which is a part of it, or by means of the solar or astronomical observation.

Q. How is it determined—in making a survey for a patent how is the meridian determined—in surveying a mining claim for patent? In doing the work and in determining the lines upon the ground with a transit, how do you determine the courses or how do you determine the meridian?

Objected to as incompetent, irrelevant and immaterial. [1427]

Objection overruled. Plaintiff allowed an exception.

A. In making a particular survey or careful survey, such as a patent survey is, the needle is entirely disregarded in determining the meridian and the meridian is determined by means of the transit from an astronomical observation.

Judge WINN.—I move to strike the answer as not throwing any light upon this case.

Motion denied. Plaintiff allowed an exception.

Q. In running out the lines for patent notes is any attention paid to the variation given in the patent?

Same objection. Objection overruled. Plaintiff excepts.

A. No, sir.

Q. Does that in any wise affect the location of the claim as surveyed upon the ground?

Same objection. Objection overruled. Plaintiff excepts.

(Testimony of B. D. Stuart.)

A. No, sir; it does not.

Q. Now, if you were to start, or if anyone were to start with a compass and start at any given point along either of the end-lines or either of the side-lines of the Lotta claim, marked on Exhibit No. 7 with a dark line or with a black line, and as described by you as being the lines drawn between the stakes found upon the ground—if one with a compass would start at any given point along either of the side-lines or end-lines as so marked, taking for granted that the variation and declination between the compass and the true meridian was as given in the patent, how would the lines so run compare with the lines as they exist upon the ground, when the claim is run out in accordance with the stakes that are found?

Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Plaintiff allowed an exception. [1428]

A. Such person starting from any point on the Lotta claim as indicated by the posts on the ground, running from that point to any other point on the claim, assuming magnetic declination of 30° —he would probably retrace the lines as they are upon the ground.

Q. Probably retrace the lines as they are upon the ground? A. Yes, sir.

Q. Do you know what the distance is measured on the ground from Corner No. 4 to stake marked No. 5 of the Lotta lode—reducing the measurement to the

(Testimony of B. D. Stuart.)

horizontal? A. May I refer to my notes?

Q. You may.

A. The distance measured from the axis of my instrument to Corner No. 4, the instrument being set up at Corner No. 5, is 149.3 feet. The distance on the ground would be somewhat greater than that, that is, measuring from the surface underneath my instrument to the post would make the angle a little steeper and would make the slope distance somewhat greater.

Q. About how much greater?

A. Four or five inches, I should say, offhand.

Q. That, then, would make the distance on the ground from stake to stake within an inch or so of being exactly 150 feet? A. Yes, sir.

Q. You haven't at this time the measurements from stake No. 1 to stake 6 or any other stakes?

A. No, I didn't measure them directly. I located each one from my traverse and figured the distance between them.

Q. Now, you testified something about a tracing-line, and about surveying the line with a compass and a transit on Saturday. [1429] I wish you would make that clear to the Court as to how and what a surveyor would do and the manner in which he would work, running on the ground with a transit where the ground had not been previously surveyed. I didn't include that in my question Saturday.

A. In the matter of getting his courses?

(Testimony of B. D. Stuart.)

Q. Yes.

A. The first thing he would have to do would be to make an astronomical observation of some kind. He would have to have that before he could determine the declination of the needle at that place.

Q. That done, how would he proceed?

A. He would proceed to deflect his angles from the true meridian as determined by the astronomical observation.

Q. Would the needle be of any assistance to him in the first instance?

A. Not knowing the declination, it would not.

Q. Now, the line once having been established in the manner you have indicated by taking a solar observation and being afterwards retraced by a compass—I will withdraw that.

Q. After you take the solar observation, then what do you do with reference to your declination—what do you do about that?

A. Having determined your true meridian, you set the sight of your telescope upon the true meridian, then read the needle on the needle plate and it gives you the declination at that place and at that time.

Q. You have already testified that that declination is not constant? A. Yes, sir. [1430]

Q. But varies from time to time?

A. From time to time and place to place.

Q. How about from place to place?

(Testimony of B. D. Stuart.)

A. It varies also from place to place.

Q. In a mineral country like this, it frequently varies a great deal in a short distance?

A. It does.

Q. Now, having surveyed a claim with a transit according to the true meridian ascertained by taking an astronomical observation and having found your magnetic declination, in tracing the claim upon the ground with a compass, not with a transit but a compass, what would you do, what is the only way it could be retraced to take into consideration the declination, as you found it by means of your astronomical observation and compass, making allowance for that declination in the pointing of your compass and needle?

A. You proceed with the survey in that way.

Q. If the declination had changed between the time the survey was originally made and the declination determined and the time at which the lines were afterwards sought to be retraced by the use of the compass, how would that change appear in the lines as afterwards found if the work was done properly in both cases?

A. The difference between the two lines would be the difference in the variation or the declination.

Q. If the declination was erroneously given in the first instance, the same result would follow?

A. The line would be in error; yes, sir.

Q. The line would be in error to the extent—

(Testimony of B. D. Stuart.)

A. Of the error in the original work. [1431]

Q. In the declination? A. Yes.

Q. In retracing the line, now, with a transit, how do you proceed?

A. Well, you set up at some known point on the survey and obtain the true meridian by means of an astronomical observation and deflect your angles from that true meridian according to the notes that you had.

Q. Pay no attention to the variation indicated in the patent or in the notes? A. No, sir.

Q. Why wouldn't you pay any attention to it?

A. Because the declination of the needle in the first instance might have been erroneous and the change in the declination might have been such as to affect the retracing.

Q. The surveys made by you in this connection you have testified have been made after taking an observation? A. Yes, sir.

Q. An astronomical observation?

A. They had.

Q. Did you survey the width of the creek at the canyon, at the point where the line 5-6 crosses the creek as indicated upon the ground by those stakes—the line 5-6 of the Lotta?

A. I did. I located points on each side of the creek there.

Q. Do the points show on your exhibit No. 7?

A. The point on the north side of the creek shows.

Q. Does the other one show?

A. No, I located a notice on the other side of the

(Testimony of B. D. Stuart.)

creek but it doesn't show on this map.

Q. Place it on? [1432]

A. As near as I can, yes.

Q. I will now ask you to tell me what the width is of the canyon at that point, at the level of the creek?

A. That creek was platted on and I can scale it. The width of the creek at the water level at the time I made it was 15 feet.

Q. When you speak of the width of the creek or the width of the canyon you mean—

A. The width of the canyon at the creek level, at the water surface, measured at right angles to the course of the creek.

Q. How are the walls at that point as to being perpendicular or otherwise?

A. Very steep, rocky, solid rock—bedrock.

Q. Does it go up before you reach a bench?

A. On the southeasterly side of the creek—it would be more easterly—on the easterly side of the creek, I should say it rises—it goes clear to the top of the ridge almost, almost to the ridge at the top but there the rock behind changes and stops. Part of it is, I should say, 50 feet high. On the other side it is not quite so steep—perhaps rises, I should say, at an angle of at least 50° for an elevation of 40 or 50 feet, as I remember.

Q. Now, at that elevation, at your 50 feet, when you reach the first bench, about what is the width of the canyon—do you know exactly what it is or do you have to approximate it?

(Testimony of B. D. Stuart.)

A. I would have to approximate it.

Q. Approximately how wide is the canyon?

A. I should say it was about 160 feet—160 or 170 feet.

Q. And the walls do not deflect one way or the other very [1433] much between those two levels?

A. Not very much.

Q. What is the character of the walls as to being rocky or otherwise?

A. On the south side it is solid rock; on the north side it is solid rock for some distance above the creek, covered though by a washout the bedrock is exposed in the bottom of the creek.

Q. What is the character of the canyon at other points along the course of the creek as indicated on exhibit 7 within the boundaries of the Lotta or thereabouts as compared with the canyon at the point which you have just described?

A. They are fully as steep at other places, if not steeper, above and below that point.

Q. As to the width of the canyon, how does the balance of the canyon compare with that place?

A. I should say it was fully as narrow.

Q. What is the condition of the canyon at the point nearest stake No. 2 or Corner No. 2?

A. The east side of the creek is a rocky bluff,—the north side of the creek is not quite so solid rock—it is rock, too, but the wash from the hillside above has come down and made a sort of slide near the point where corner No. 2 should be according to the stakes on the ground—it is very steep,—one can hardly

(Testimony of B. D. Stuart.)

climb up it.

Q. Taking into consideration the condition of the ground and the topography of the ground there, is there any chance for that creek to change its course at any point between the falls or at any point between the bridge across the Humboldt mill and the present dam of the Alaska-Juneau Company?

Judge WINN.—We object to that as incompetent, irrelevant and [1434] immaterial and no foundation laid.

By the COURT.—How far up have you surveyed the creek?

A. I have surveyed it up about opposite the Ebner mill. I did not locate points through there; I couldn't get through to the corner. When I was there at stake 131, station 131, I took a sight, ran up the course of the creek and put the creek in from that sight, sighted it up through—the falls and rapids above change the centre of the creek and I put the creek on from that. The creek, as a matter of fact, I think winds back and forth in there but that is the general course of it through the centre.

Objection overruled. Plaintiff allowed an exception.

Q. You may answer the question.

A. Judging from what I know of the stream and that character of rock, I should say that it would, within a generation it would change.

Judge WINN.—We move to strike the answer as not an answer to the question and no foundation laid by the witness to answer the question.

(Testimony of B. D. Stuart.)

Motion denied. Plaintiff allowed an exception.

Q. When you say in a generation, what do you mean by that term—about how long?

A. Within three score years and ten.

Q. What, if anything, did you do in the way of surveying the Colorado claim?

A. I surveyed the Colorado claim, that is, I ran a traverse to the points where the corners should be. I found posts—what I take to be posts—for corners Number 5, the northwest corner, and Number 5, the southwest corner.

Q. Did you find a post marked for the Colorado at Corner No. 5? [1435]

A. No, sir, I found a pile of rocks with the stub of a broken off post in them.

Q. That was approximately, however, at the point where corner No. 5 of the Colorado would fall?

A. Yes, as determined from Corner No. 5 of the Idaho.

By the COURT.—Where is corner No. 5 of the Idaho?

A. It is marked 5 and is just above the letter “h” in the word “Idaho” on Exhibit 7—I found a post there at that point.

Q. Describe that post?

A. It is a post 4x4 inches, painted white, standing 2 feet above ground, post in very good condition, located on the side of a steep bank just below the trail leading from the south end of the Jualpa dam to Snowslide Gulch and 50 or 60 feet south of Gold Creek—post described as 5 S. 641 Idaho.

(Testimony of B. D. Stuart.)

Q. Starting from that point on the Idaho and running to Corner No. 5 of the Colorado, you found the mound of rocks with the piece of stick in them as you have just described? A. Yes, sir.

Q. Do you know what relation that corner bears to the Last Chance surveys, in accordance with the notes of the surveyor general's office?

A. I have never looked up the Last Chance survey. It was pointed out to me as being that corner by those with me.

Q. What other stakes did you find upon the ground that were marked for the Colorado?

A. I found a stake which was marked for the common corner of the Colorado and the Idaho.

Q. Did it have any Colorado marks on it?

A. Just the survey number, the survey number for both claims just the same—it was marked for both corners. [1436]

Q. Where is that stake? Indicate on exhibit 7.

A. It is not numbered. It is Corner No. 4.

Q. Mark it Corner No. 4, then.

A. It is marked with a black circle, with a "4" above it in lead pencil.

Q. What, if any, stakes did you find on the Colorado that had any Colorado marks on them besides those two?

A. I found no other. I might say in looking for the other corners I ran on what would be the course indicated by the line I had determined, ran a line up until it intersected the brushed-out line, the Lotta side line, as indicated by the stakes on the ground;

(Testimony of B. D. Stuart.)

there were three of us and we made very diligent search in that vicinity for a radius of 300 feet, perhaps spent an hour, and found no indication of a corner.

Q. Did you find any indication of any stakes of the Colorado anywhere along the line?

A. No, sir.

Q. Except those you have indicated?

A. No. I then ran that line out to the southeast for several hundred feet and searched in the vicinity of where the southeast corner should have been in the same way. We probably spent two or three hours up there within a radius of three or four hundred feet, searched for marks which were called for in the patent notes. One mark was a cross on a boulder and we searched very diligently for that and found nothing.

Q. Did you find any corners that were marked as corners of the Nevada? A. I did; yes, sir.
[1437]

Q. Did you find any stake 4x4, 2 feet above the ground, firmly settled on the rocks there?

A. I did not.

Q. What did you find there, generally? (Withdrawn.)

Q. I will ask you if you are familiar with the patent notes of the Colorado?

A. I have read them over; yes, sir.

Q. Will you indicate upon exhibit 7 where the Colorado would lie if platted in accordance with the field-notes as given in the patent?

(Testimony of B. D. Stuart.)

Judge WINN.—We demand the production of the field-notes of the Colorado.

Mr. HELLENTHAL.—They are already in evidence.

Q. I hand you here the plat marked Defendant's Exhibit 2, which purports to be a certified copy of the official plat from the surveyor general's office of the Colorado and ask you to look at it and then state where the Colorado would lie upon the ground, or where the Colorado would be platted upon your plat No. 7 if platted in accordance with the notes indicated upon that plat?

Judge WINN.—May I ask a question?

By the COURT.—Yes, sir.

Q. (By Judge WINN.) I will ask you if you can correctly plat the claim, on the plat there with the field-notes?

A. I can with the courses and distances given in the plat; yes.

(The field-notes are admitted in evidence as Defendant's Exhibit No. 27.)

Judge WINN.—I object to any of this testimony in this case pertaining to the Colorado lode—it is not contended in this case that there is any conflict between the Parish No. 2 and [1438] the Colorado, nor is it contended that there is any conflict between the Lotta patented claim and the Colorado and any evidence pertaining to the Colorado is immaterial.

Objection overruled. Plaintiff allowed an exception.

Mr. HELLENTHAL.—Answer the question.

(Testimony of B. D. Stuart.)

A. The Colorado claim platted from the surveyor general's office notes, beginning with Corner No. 5, which is presumed to be identical with Corner of the Last Chance Placer No. 3, I believe, Survey No. 142, lies indicated by the green lines upon exhibit 7.

Q. How many feet would it be from the northeasterly corner of the Colorado claim thus located to the point where the northerly side line of the Colorado would intersect a line extended from the line 5-6 of the Lotta as the stakes are found upon the ground?

Judge WINN.—We make the same objection. It is incompetent, irrelevant and immaterial and is not proper subject matter of rebuttal.

Objection overruled. Plaintiff allowed an exception.

A. I understand that distance—yes. The distance from the northeast corner of the Colorado is platted, as I have explained, to the line of the Lotta as indicated on the ground, by the stakes on the ground, extended southeasterly, measured from corner Number 5 perpendicularly to that line is 322 feet.

Q. What is the distance from the point where the northerly side line of the Colorado intersects the line to which you have just testified, being an extension of 5-6 as found upon the ground of the Lotta—to corner No. 5 of the Lotta?

A. The distance scales 390 feet.

Q. What is the distance from the Corner No. 3 of the Lotta to point where a line drawn from 2 to 3 of the Lotta would intersect [1439] the Colorado?

(Testimony of B. D. Stuart.)

Same objection. Objection overruled. Plaintiff allowed an exception.

A. The distance from Corner No. 3 of the Lotta on the ground measured along an extension of the line 2-3 of the Lotta claim, as indicated by the stakes on the ground, to a point where such line would intersect the north side line of the Colorado as platted according to the patent notes, as I have already explained, would be as near as I can scale it, about 530 feet.

Q. What would be the distance, now, from Corner No. 5 of the Lotta as platted by you on this map in green to a point on the northerly side line of the Colorado, if the southerly side line of the Lotta as thus platted by you were extended?

Same objection. Objection overruled. Plaintiff allowed an extension.

A. The distance would be, as near as I can scale it, 574 feet.

Q. I hand you here a Notice of Location—

Mr. HELLENTHAL.—I ask that this Notice of Location of the Colorado be marked as Defendant's Exhibit 28.

Judge WINN.—We object to it as incompetent, irrelevant and immaterial to prove any issues in the case, for the reason that the Colorado lode claim is conceded to have gone to patent.

Objection overruled. Plaintiff allowed an exception.

The Notice of Location is admitted as Defendant's Exhibit 28.

(Testimony of B. D. Stuart.)

Q. I hand you here what is marked Defendant's Exhibit No. 28, which purports to be a location notice of the Colorado and ask you to look at it and state where the Colorado would be platted upon the ground if platted in accordance with those [1440] notes.

A. The courses and distances seem to be practically the same. I notice one or two slight differences between these notes and the patent notes.

Q. They are practically the same.

A. Yes, they are practically the same. The line 5-6 in the patent notes is 1474 feet long and in this it is 1478; there seems to have been an approximation. It is described as starting at the same point, Corner No. 3 of Survey No. 142, the same point described in the patent notes, being Corner No. 5 of the Colorado. Otherwise it would plat in practically the same way except the jog which is shown in the southeasterly corner wouldn't appear—the east end line and the south side line would intersect at the point.

Q. Aside from that the claim would be platted practically as it is in accordance with the patent notes? A. Yes, sir.

Mr. HELLENTHAL.—I now offer in evidence the patent notes of the Colorado.

Judge WINN.—We object as incompetent, irrelevant and immaterial for any purpose in this case.

Objection overruled. Plaintiff allowed an exception.

They are admitted as Defendant's Exhibit 27.

(Testimony of B. D. Stuart.)

The WITNESS.—I notice another difference here. The east end line in the location notice seems to call for a distance of 500 feet, and it must be a mistake, because the notes call for the two side lines to be parallel, which they wouldn't be at that distance of 500 feet.

Q. Please take your pencil and mark on the exhibit here the number of feet it would be from Corner No. 5 of the Lotta as platted by you in green ink to the side line of the [1441] Colorado opposite that point—please mark there in figures the number of feet.

A. 574 feet—that is as near as I can scale it with this board.

Q. Now, mark in figures there the distance between Corner No. 5 of the Lotta as found upon the ground, as indicated by the stake that is found upon the ground, and the point where that southerly line would intersect the Colorado.

(Witness does so.)

Q. Come here please and write on this exhibit, somewhere along this green line of the Colorado, the words "Colorado platted according to patent notes," so we will know what they are.

(Witness does so.)

Q. Also mark on this plat the green line of the Lotta—Lotta according to the patent notes.

(Witness does so.)

Mr. HELLENTHAL.—That is all at this time, on that branch of the case.

(To follow the omission on page 778 of the origi-

(Testimony of B. D. Stuart.)

nal transcript [printed record, page 972] indicated by * * * , being part of the direct examination of Mr. Stuart, by Mr. Hellenthal.)

Q. How about the Canyon, did you survey that?

A. Yes, sir.

Q. What, if anything, did you find in the way of stakes in the Canyon claim?

Judge WINN.—We object to anything with reference to the Canyon location, for the reason that it appears affirmatively in this case from the defendant's evidence as testified to by Mr. Kinzie that the Canyon claim covers a large portion of the Oregon lode claim as located by Corbus and the location made by Corbus was made for this company and the location [1442] of the Canyon claim was also made for this company—it is an attempt to relocate a mining claim after it had been abandoned and had become forfeited, and it is against the law and makes the attempted location absolutely void and of no force and effect.

It is understood this objection applies to all evidence regarding the Canyon. Objection overruled and plaintiff allowed an exception.

Q. I hand you exhibit No. 25, which purports to be a notice of location of the Canyon lode claim, and ask you what, if anything, you did in the way of surveying the Canyon claim upon the ground as described in that notice.

A. I surveyed that claim from four of the corners.

Q. Where did you find them?

A. Found them as indicated in those red circles

(Testimony of B. D. Stuart.)

on exhibit 7, connected by means of a red line.

Q. The claim platted upon exhibit 7 in red, then, is the Canyon claim as described in that notice—is that right?

A. It is the Canyon claim as I found the stakes upon the ground.

Q. Which stakes did you find?

A. I found three stakes, on the southeasterly end line and the northwest corner.

Q. Please sit down here and mark that red line "Canyon Claim."

(Witness does so.)

Judge WINN.—We move to strike out all the evidence of the witness pertaining to the Canyon claim upon the additional ground. We object to its introduction for the reason that the location notice of the Canyon claim states that the Canyon claim is bounded on the easterly side or the northeasterly side by the Lotta lode claim and it appears affirmatively [1443] from the testimony of the witness Stuart that in none of these floating positions in which he has placed the Lotta lode claim will the Lotta be bounded on that side by the Canyon—it intersects and runs through the Lotta lode claim in any position they chose to put it upon this plat and map, testified to by this witness.

Mr. HELLENTHAL.—I expect we will have to lose that part of the Canyon that overlaps the Lotta.

Objection overruled and motion denied. Plaintiff allowed an exception on denial of motion to strike.

(Testimony of B. D. Stuart.)

(To follow the omission on page 785 of the original transcript [printed record, page 980] as indicated by * * * , being a continuation of the direct examination of Mr. B. D. Stuart, by Mr. Hellenthal.)

A. I now direct your attention to Plaintiff's Exhibit "N." I will ask you what, if anything, you did in the way of surveying the Humboldt dam.

A. I surveyed the Humboldt dam.

Q. You did that in connection with running your traverse lines? A. Yes, sir.

Q. You know where the Humboldt is situated upon the ground? A. I do.

Q. What is the distance from the Humboldt dam as established by you upon the ground to the corner, which is the common corner of the Crown Point and Keystone on the northerly end line of those two claims as platted on Plaintiff's Exhibit "N"—the distance as platted there? A. About 150 feet.

Q. How far would that corner be from the dam as located by [1444] you, if the end line of the Lotta as platted by you on exhibit 7 in green were extended in the direction of the Crown Point and the measurements allowed that are on the patent for the Crown Point, Keystone and those various intervening claims, approximately what would the distance be?

A. Why, judging from the distance that the Lotta claim in green on exhibit 7, shifted to the northwest from the claim as it is on the ground, it would bring it about 50 feet nearer to the creek at that point, which would make it about 90 feet to 100 feet to that

(Testimony of B. D. Stuart.)

line, as it would be.

Q. From 90 to 100 feet? A. Yes, sir.

(To follow the omission on page 798 of the original transcript [printed record, page 994] indicated by * * * , being part of the cross-examination of Mr. B. D. Stuart, by Judge Winn.)

Q. That is the one that you say there is no other place on the creek between certain points that you could place the claim other than it is?

A. Yes, I believe so, according to the notes in the patent for the Lotta.

Q. Now, when you first commenced testifying in this case, you went along the old wagon road and from different stations on that wagon road you made surveys to different points on Gold Creek?

A. No.

Q. What did you do then?

A. I ran a traverse along the road and down the creek and up the creek and closed on the road. From there I started station 93 on the map. [1445]

Q. You were over on the Basin road with your instruments? A. Part of the time.

Q. Who did you have down in the creek?

A. I went down in the creek myself.

Q. How did you get these points along the creek bank from the road?

A. I made stations that are marked on there, numbered from 107, the next one 124, the next one 125, the next one 130, and 131—those are the only stations I occupied with my instrument.

Q. Did you do anything on the road over here with

(Testimony of B. D. Stuart.)

reference to these stations with your instrument?

A. The traverse on the road was taken as I ran right down, measured down from 95 to 120, from there to 107 and up the creek to 124, then 125, 130 and 131, and then measured back to 93 where I started.

Q. Who assisted you in that?

A. I believe Mr. Hawley was with me and Dillman and Nunsucker.

Q. Hawley is also an engineer of the Treadwell people?

A. I don't know whether he is an engineer or not.

Q. A surveyor is he?

A. I don't *know education* or experience he has had.

Q. What was your object in making that survey?

A. To correctly show the creek with relation to the post on the ground and the road.

Q. You didn't measure the width of the creek there on the level of the water at that time?

A. Yes, sir.

Q. From bank to bank? A. Yes, sir. [1446]

Q. At those different stations? A. Yes, sir.

Q. Did you measure it at any other place besides those different stations you have just mentioned while you were making this survey?

A. I located the points indicated by small red circles on each bank of the creek and then at each of those points I had the men measure across the creek and tell me the width of it at those points.

Q. Did you measure the bed of the creek at the

(Testimony of B. D. Stuart.)

edge of the water? A. Yes, at the water level.

Q. What stage of water was there in Gold Creek at that time? A. An average stage—a fall stage.

Q. A kind of medium stage?

A. I don't know, it was somewhat lower than it is now.

Q. It was somewhat lower last fall than it is now?

A. Yes, but there was a pretty good flow of water in the creek at that time.

Q. You did measure the creek on a level with the water at each one of those points you have a station?

A. Yes, not to the inch, but I measured it within a foot.

Q. How did you measure it, with a tape?

A. Yes, sir; I had those points located on the bank of the creek and we estimated the distance across the creek.

Q. You didn't measure across the creek with a tape, accurately?

A. No, I had the men call to me what the width was, at the point where they measured to.

Q. What the width of what was?

A. Of the creek at the water level. [1447]

Q. How would they know the width of it—Guess at it? A. No, they would estimate it.

Q. That is another way of estimating it?

A. It depends on the party. Some parties are better guessers than others. I think it is easy to tell whether the creek is 5, 10, 15 or 20 feet wide from looking at it.

Q. Then, you didn't take any tape or instrument

(Testimony of B. D. Stuart.)

to measure it? A. No.

Q. Now, your main object in doing that was to properly sketch in the creek, to better sketch in the creek as it crossed the Lotta claim?

A. That was my idea, to get it as correctly with respect to the posts on the ground as I could, with relation to the road.

Q. You didn't pay any particular attention to the width of the creek—you took the points along there and the creek is sketched in as surveyors usually sketch in creeks, where they have the amount of information *you*, or sometimes less?

A. I don't know the custom of surveyors generally—it was done as closely as I could do it.

Q. Did you ever serve in the capacity of a deputy United States mineral surveyor or deputy United States surveyor?

A. I never had a commission but I have done a good deal of that work.

Q. Did you ever survey for mining claims and submit your survey to the surveyor general for patent, etc.? A. Yes, sir.

Q. About how much of that work have you done?

A. For the greater part of three years, while I was with the Federal Company—during the course of three years. [1448]

Q. Were you deputy United States surveyor?

A. I was not; no, sir.

Q. Under your law there you could make surveys for patent whether you were a deputy or not?

A. The notes were obtained sometimes by other parties and I had the position of checking over those

(Testimony of B. D. Stuart.)

and correcting them, and if they were sent back from the surveyor general's office, I had the position of checking them through again.

Q. Did you ever submit to any official an official map for a patent in all your surveying, wherein you would simply commence at a corner post and run down across a creek and make a call to the creek and continue on across and survey around the claim and make a corner as you come back as you have indicated you did on the Lotta—did you ever submit any such map to an official?

A. No, that is only done by the mineral surveyor himself.

Q. Do you know anything about surveying for a patent, as to whether or not if you were making a survey for a mining claim for patent, anywhere in the United States, that they would accept a map or plat of your survey if you tied it up to no other monuments except a call to a creek or such object as you might cross that you have to call to under the United States statute?

A. I don't know whether they would accept it or not.

Q. You know, do you not, that there will not be any survey accepted anywhere for patent unless you tie that claim up to some permanent monument, other than making calls to natural objects such as creeks, etc., when you cross it?

A. I know that is the regulation now—that is, they have to tie to either the corners of the public land survey or to some mineral monument which is es-

(Testimony of B. D. Stuart.)

tablished. [1449]

Q. And you never have known a time in your career as a surveyor that any surveys would be accepted unless they were tied up in that way?

A. The regulations require that.

Q. Now, then, when you testified to the Court here then that you conceived these calls to Gold Creek as ties, you didn't mean that they were such ties as would be accepted by any public official who would pass upon a survey for patent, did you?

A. I think they might be accepted under certain conditions.

Q. Where? Under what conditions?

A. If there were no others there.

Q. You just now said that all you ever found out about this, in accepting surveys for mining claims that they never will accept it unless you tie it to some natural object or monument other than giving calls to creeks you cross?

A. If I understand your question—I don't know whether I understood the former question—if the survey was just being originally made for the first time, such ties alone without any other ties would not be accepted; no, sir.

Q. Now, when you make calls to a creek it is done principally for topographical purposes?

A. I don't know what the purpose of the land office is in requiring them—I only know it is required; that is all.

Q. But you do know that that is not considered in its proper sense a tie?

(Testimony of B. D. Stuart.)

A. I don't know how they consider it; no, sir.

Q. Now, then, as a surveyor I will ask you which would you consider the most certainty, where a claim is tied up to some United States monument, where you could check from the monument [1450] and retrace your line and find the stake, or if you find the stake you could retrace to your monument—would you consider that a matter of more certainty than you would a simple call to a creek or side line of a claim, if you surveyed it?

A. From what I know and my experience with mineral monument ties, I would say that in a great number of cases calls to the creek would be much more accurate than the mineral monument connection.

Q. The mineral monument is built there and don't move nor change, does it—it is supposed to be a permanent object?

A. It is supposed to be—they are not, always.

Q. Have you ever seen the United States monument Number 2 up here that has been tied up to so often with those claims? A. Yes, sir.

Q. That doesn't show any indications of having been moved, does it? A. No.

Q. What sort of a monument is it, as you remember?

A. It is situated on the summit of a small ridge in Silver Bow Basin beyond what I think is known as the Nowell placer and consists of a large amount of rock and a post, quite a large post—I don't know the exact dimensions of it. I should say eight or ten

(Testimony of B. D. Stuart.)

inches square, perhaps, and it is so tall that a person cannot sight up over it—you can scarcely stand on the tip of your toes and reach the top of the monument.

Q. It is a pretty permanent looking object?

A. It is a pretty permanent looking object; yes, sir.

Q. You don't know when it was built or who put it there? [1451] A. No.

Q. Don't you know who put it there from an examination of the notes in the surveyor general's office? A. No, sir.

Q. I will ask you if you do not know that George W. Garside established that point?

A. I never heard it, no.

Q. Now, of course, if a creek didn't change its course any, remained always in the same place and you knew where a few stakes of the claim were, then a tie up there to the creek might help out?

A. It certainly would.

Q. In a call to a creek, when you commence at a post and run down to the creek, do you take the centre of the creek or either one of the banks?

A. The centre of the creek.

Q. You know from the surveys you have made up here in the Basin—take Plaintiff's Exhibit "N" in this case—you know clear on up above the Golden Fleece claim,—from there on up the Perseverance, up above the Golden Fleece and then off to the south-east of this Lotta group of claims, that it is patented for a mile or so, the claims are?

(Testimony of B. D. Stuart.)

Objected to as immaterial. Objection overruled. Defendant allowed an exception.

A. Only from the maps I have seen. I don't know how far they extend or anything about that.

Q. You must have passed four or five weeks up here in the Basin surveying and I understood you to say a while ago that you didn't put in all that time on the Ebner group,—you were surveying on some other property up there? [1452]

A. I didn't spend all my time on the Ebner property, no, sir.

Q. Did you spend part of the time on the company's property, on the Alaska-Juneau Company's property? A. Yes, sir.

Q. Where does their property lie with reference to this group of Lotta claims on exhibit "N"?

A. Northeast.

Q. And they extend on up,—how far up from the Lotta group of patented claims?

A. I should say it was a couple of miles around the road.

Q. You say you never had any occasion to make a survey of the Last Chance property which is one that the Colorado and Idaho are tied up to?

A. No; I never did except for that corner. I didn't have to, and the corner I referred to this morning, Corner No. 3 of Survey No. 142, I never done any surveying there, didn't know anything about it that way.

Q. The principal part of your time was put in to find some place on Gold Creek that you might locate

(Testimony of B. D. Stuart.)

the Lotta patented claim, so that you could get the dam of the defendant company off of that claim, wasn't it?

A. Not at all. I had no interest in that whatever.

Q. I believe you located the Lotta claim according to about three or four different plans the other day on these maps and exhibits belonging to the defendant company and which have been offered in evidence. You first take it, I think, and locate it as we claim it is and you describe the number of stakes you found on the ground—now, according to the location, the way we claim the Lotta is and the way Mr. Hill and Mr. Wettrick have testified about it—I see you have [1453] sketched in Gold Creek—now, how far did you find that corner No. 2 of the Lotta claim according to this sketch is from Gold Creek?

A. I think I testified in direct examination that it was about 80 feet.

Q. Do you know how far it calls in the field-notes and the notes that are in the patent? A. Yes, sir.

Q. How far?

A. The patent calls for it as being 40 feet and the field-notes 50.

Q. And you found it to be about 80?

A. Yes, sir.

Q. In that respect the survey differs from the notes in the patent? A. It does; yes, sir.

Q. Now, this matter of putting the creek on, in any of these claims that you have testified concerning, is a matter of more or less sketching?

A. Very little when you have as many points as

(Testimony of B. D. Stuart.)

there are located there. I might further state in that connection that I located the points; I located—wherever there was any change in the course of the creek, any material change, I located my point, principally at those points in the creek and where the creek changed its course I didn't locate points between those points where the course of the creek was crooked.

Q. How wide did you find the creek where the black lines here crossed the creek on the Lotta claim as you have platted it in on this plat, as we claim it to be? [1454] A. About 15 feet approximately.

Q. How wide did you find the creek down where your dam was put in?

A. About 20 feet, that is, measured normally to the direction of the current.

Q. And how wide is your dam across there, do you know—the length of the dam across the creek—I mean from one end of the dam to the other as you built it in the creek bed?

A. The dam proper across the creek is about 25 feet long.

Q. What do you mean by the dam proper?

A. Where the dam is across the water.

Q. But the whole structure I mean of your dam?

A. There is an abutment that extends to the northwest which is used as an anchorage for the dam proper. There is a large boulder just above where the word "dam" is written—that would be indicated on the map just above where the word dam is written, to which that end of the dam is anchored and the

(Testimony of B. D. Stuart.)

upper portions of the dam are anchored behind that dam to extend about to the point marked on the map 107—the dam is located diagonally with the canyon—it is practically parallel with the general course of the creek above.

Q. The whole structure is 70 feet across there?

A. About 65 feet.

Q. And that is in the canyon down the creek?

A. Yes, sir.

Q. Now, here is a map I desire to call your attention to which Mr. Kinzie identified—I offered it in evidence while he was on the witness-stand—it is attached to the answer, the defendant company's answer in 803-A. Did you have anything to do with the making of that map—I refer to Plaintiff's [1455] Exhibit "II"?

A. I never saw it before; no, sir.

Mr. HELLENTHAL.—I will now offer in evidence the chart which has been marked Defendant's Exhibit No. 6 for Identification. It is admitted as Defendant's Exhibit Number 6.

Mr. HELLENTHAL.—Also the chart marked Defendant's Exhibit No. 7 for Identification. It is admitted as Defendant's Exhibit No. 7.

Mr. HELLENTHAL.—Also the chart marked for Identification #11. It is admitted as Defendant's Exhibit No. 11.

Q. I will ask you to take that little map I handed you and we will go to the Defendant's Answer in 803-A and just casually look at the two maps, that little one and the large map Defendant's Ex. 11, and

(Testimony of B. D. Stuart.)

see if you do not think that one is the same as the other, altho one is made on a larger scale?

A. Well, in a general way they are similar; yes, sir—I wouldn't care to testify that they are the same in particulars.

Q. You see the Lotta claim on that map you have in your hand, attached to the answer in 803-A?

A. Yes, sir.

Q. I will ask you how the creek is sketched in on the Lotta claim in that map with respect to Corner No. 2, in the one you have in your hand, how is it sketched in on that, exhibit "II"?

A. Where it crosses the Lotta line as shown on exhibit "II" the creek passes apparently through the northeast corner.

Q. Give the distance with respect to the corner.

A. I will say nearer to the northwest corner considerably than it is to the southwest—it has no scale.

Q. That Corner No. 2 is sketched in correctly there? [1456] A. Yes, I said that.

Q. Could you by any means on that exhibit "II," could you tell about how the creek was sketched and how the Lotta claim was sketched in on this exhibit?

A. I don't know anything about how this map was made—I didn't make it and didn't have anything to do with it.

Q. You were here and heard the testimony of Mr. Wettrick and Mr. Hill and Mr. Ebner and Mr. Webster, did you not? A. I thing I did, most of it.

Q. You have been in the courthouse almost continuously since the commencement of this trial?

(Testimony of B. D. Stuart.)

A. A large portion of the time.

Q. I want to ask you to take our Plaintiff's Exhibit "N," and taking it for granted that Mr. Webster testified that he had seen Garside set this stake, at the intersection of the Webster Millsite, southwest side line of that millsite, where it intersects the upper end line of the Taku lode and also that he knew where the stake No. 2 and 6 is, which forms a common end stake of the Crown Point and the Keystone lode claims—now, considering that those stakes are there and were set there by Garside upon his survey, I will ask you if, taking into consideration also Mr. Hill and Mr. Wettrick's testimony about the call from one of those corners to the Ebner mill—I will ask you if you ever took into consideration those points being established as I have indicated and then took the notes of the patent or the patent field-notes of the survey which contains the Lotta lode claim in it and made any survey down or up the common side line of that group of claims?

A. I don't believe I thoroughly understand what you are trying to get at. [1457]

Q. Taking into consideration that Webster testified truthfully about this stake I have indicated to you on one of the side lines of that millsite and where it intersects one of the end lines of this group of claims upon which the Lotta is patented—you heard him testify about another stake further on which he saw Garside set?

A. No, I didn't hear that testimony—I didn't catch it if I did—I don't remember hearing that; I

(Testimony of B. D. Stuart.)

was either out of the room or didn't catch it at the time.

Q. I will hand you our exhibit "B," which is a certified copy of the official map which the Lotta was patented upon and the other group of claims with it, and I will ask you if in your surveys up on this property you ever run along the common end line of that group of claims, their common end line?

A. I never ran it out, I located some points on it—that is, I never ran right along the line and ran it out—I located some points that were supposed to be on that line.

Q. You found what we claim to be corner post No. 6 of the Lotta on the ground as Mr. Hill testified?

A. Yes, as indicated on the defendant's exhibit.

Q. There is no difference between you and Mr. Hill and Mr. Wettrick as to where that is located?

A. I have never checked it up on the map but in a general way it is the same.

Q. Have you checked up the courses and distances on Plaintiff's Exhibit "N" with some of your courses and distances on your exhibit?

A. No, I did not—in a general way I noticed they were about—

Q. You didn't find any difference?

A. Nothing material, no. [1458]

Q. Your length of the Lotta claim is practically the same? A. Yes, sir.

Q. And the length of the end lines is practically the same?

A. I believe they are similar; yes, sir.

(Testimony of B. D. Stuart.)

Q. You found what you call No. 1 stake of the Lotta on the ground—what has been referred to as Corner No. 1?

A. Yes, marked for Corner No. 1 of the Etta.

Q. Did you make any further survey for the common end line of the Lotta, Keystone and Crown Point?

A. I located what is supposed to be that intersection corner you have mentioned.

Q. Of the Webster Millsite?

A. It is marked for the corner of the lode.

Q. Did you go any further up that common end line to run out the exterior boundary lines of those claims included in this official plat exhibit "B"?

A. I located what I presumed to be the northeast corner of the Crown Point lode.

Q. You know there is a tie from that corner to the United States monument Number 2?

A. I believe it is given in the patent notes from that corner, is supposed to be, to the mineral monument.

Q. Did you run out that tie at all to the U. S. monument?

A. I ran a traverse which connected with the mineral monument and connected in with that post on the ground also.

Q. How did you find your distance there compared with the distance in the patent field-notes?

A. It was something over 100 feet shorter on the ground than the patent notes called for.

(Testimony of B. D. Stuart.)

Q. That is, Garside's was wrong? A. Yes, sir.
[1459]

Q. About 100 feet?

A. Something over 100 feet, yes.

Q. You know that all those claims you went over up there for the defendant company and all the claims of the Ebner Company so far as you have examined them, where there is any tie to a natural monument or object, they are all tied up to that United States monument?

A. I don't know that I have looked that up enough to say that in a general way.

Q. If you made any surveys up there you undoubtedly looked to see whether or not they complied with the rules of the surveyor general's office and were tied up to something?

A. In one or two cases I did; yes, sir.

Q. Do you know what the rule is now and has been for the last two or three years here in making surveys for mineral claims as to how you have to connect them up, make a connection with the mineral monument yourself?

A. I am acquainted with that rule.

Q. When you went up there to survey, wasn't that one of the first things you looked for—any claim you went upon or any group of claims—if you wouldn't look to see whether they were bound up to some natural object?

A. No, my work was to locate the points on the ground—to locate them as they are on the ground.

Q. Would you consider that a tie to some monu-

(Testimony of B. D. Stuart.)

ment, which is a United States monument, and all those claims tied up to it, wouldn't that be of assistance to you?

A. It would be of assistance to me in determining the relation of those claims to the monument, but not necessarily one to the other.

Q. Did you hear Mr. Hill's and Mr. Wettrick's testimony as to [1460] the difference they found in the distance between that Crown Point stake and the U. S. monument from what Garside's was?

A. Yes.

Q. How much did you and they differ in that?

A. I believe that we differ in course—I don't remember just what they gave—I believe we differ in courses somewhat, but not a great deal in distance.

Q. Now, then, you know that in this copy of the official plat under which the Lotta and those other claims are patented, that there is a tie made from one of that group of claims to this U. S. monument, don't you?

A. There seems to be a tie of that kind; yes, sir.

Q. And that is from what corner of what claim?

A. From the northeast corner of the Crown Point.

Q. The same as it is on exhibit "N," that is the tie—that is the tie that is marked there?

A. Yes, the same.

Q. Don't you think that in taking the field-notes of the survey of which the plat you hold in your hand is the official plat, that in order to locate these claims upon the ground as they should be and ought to be—

(Testimony of B. D. Stuart.)

don't you think if you were conscientiously trying to do that, that you would look for all the monuments that are found in connection with this entire group of claims and also would look up carefully and see what natural object or monument that any of them was tied up to in the Basin, before you undertook to locate them particularly?

A. You mean to relocate them as they substantially were originally?

Q. Yes. [1461]

A. I would not undertake to do that.

Q. You would not undertake to do that at all?

A. No.

Q. Don't you consider that the original corners as they were set by the surveyor who made the survey for patent as found upon the ground, that they would be of some assistance to you?

A. It might be of some assistance—it depends upon conditions.

Q. Suppose you go on the ground and you find by the monuments and corner posts that were set there by the surveyor general—suppose the courses and distances are all out of sort and out of joint—which one is of the most certainty the courses and distances or the monuments found on the ground?

Objected to; objection sustained.

By the COURT.—The monuments prevail.

Q. Did you make any effort in this case to go around the exterior boundary lines of this group of claims that were all patented together, including the Lotta, to find where the original monuments were placed?

(Testimony of B. D. Stuart.)

A. No, I don't know that I made any great effort in the survey; I picked up those that were within the limit of my traverse and the corners of the Lotta claim, the posts that were on the ground marked as being the Lotta—those are the ones I was particularly anxious to get and get right.

Q. Now, I will ask you this question—if it should appear in this case that the corner that is at the intersection of the southwest side line of the Webster Millsite, where that intersects the northeasterly end line of the Taku, as shown to be just where Garside said it was when he made the survey, as to whether or not that would have been any assistance [1462] to you in locating this Lotta claim upon the ground?

Objected to; objection overruled; defendant allowed an exception.

A. It might have been of indirect assistance, if I knew that that corner was the corner, which I did not know—it is marked for the corner of the ropeway.

Q. Let us take for granted that it has been established in this case—that that corner is just where Garside; and also the other corner, what is called 2-6, which is a common corner post of the Crown Point and the Keystone lode claims has been established; and suppose you take the field-notes or the notes as indicated in the patent and then run on down towards Corner No. 1 of the Lotta, and you found that all of those distances as they appear in the field-notes and as they appear in the patent and the actual measurement made upon the ground tally or practically tally—what would you say as to whether or not that would be a better way to locate the Lotta claim

(Testimony of B. D. Stuart.)

than the way you have undertaken to locate it?

A. All I would conclude from such a set of circumstances as that would be that the work was probably correctly done in the first place, providing the courses and distances between those two corners as they are on the ground agreed with the patent notes; if they did not, I would consider the work had been incorrectly done, but as I located those two corners on the ground the courses do not agree with the patent notes.

Q. If you take as you say a compass and turn off—we will call it variation—in some of the geodetic surveys they leave out the matter of declination and call that variation—you say if you turn off that variation of 30° and take a compass [1463] and put it on any one of those corner posts of the Lotta and then take Garside's courses and distances, you practically run out the Lotta claim as we contend it is on the ground?

A. If you take a compass and assume that declination and it should work out correctly, it would probably retrace that Lotta, yes, sir.

Q. Now, suppose we would take this declination or variation, whatever you term it, and take Garside's courses and distances and run off say from this common end line, corner post of the Crown Point and Keystone, 2-6 and proceed down to that until you got down to Corner No. 1 of the Lotta and then found that those distances all practically jibed in with Garsides and with the patent, then what would you have to say about it?

(Testimony of B. D. Stuart.)

A. I would say the survey was properly made with the compass.

Q. You would say it was made with a compass?

A. Yes, sir, under the conditions as I know it.

Q. Now, a transit is made up of what—describe to the Court?

Q. You first have on top of it a telescope; a transit consists of a telescope, founded upon two vertical arms which are called the standards, in a position so that the horizontal axis of the telescope is perpendicular to those standards, usually of a vertical circle, which is attached to the standard or rather which is attached to the horizontal axis of the telescope, really the horizontal circle, by means of which horizontal angles are read; all mounted upon a tripod.

Q. Here I have a compass such as surveyors use—on top of that compass virtually there is mounted a telescope and a transit? [1464]

A. No, sir—there is a compass box on a transit, but it is not in any way connected with the telescope except in an indirect way.

Q. You have a compass and usually the compass is a part of that machine—the telescope, of course, is on top and above the compass?

A. It is a part of the instrument if you are using your compass to determine your meridian.

Q. If you bring a transit in here now, your telescope is mounted up above the compass, is it not?

A. There is a compass underneath, yes, but the way you asked the question, it might be inferred that the telescope was mounted in such a way that it

(Testimony of B. D. Stuart.)

formed a part of the compass.

Q. No, I didn't mean that—I had you name the different parts of a transit and you mention the telescope and then the compass and then another part down below you read the angles by.

A. Yes, horizontal angles, that is what the telescope is practically connected with.

Q. They are all there together, the compass and all together to make up that instrument?

A. Yes, sir; I want to qualify that by saying that the compass is only a part of the instrument, if you release the needle and use the compass as part of the instrument. If you don't use the compass as part of the instrument, it is separate and cuts no figure.

Q. You said something yesterday to Mr. Hellen-thal about taking the compass and you could turn off a variation of 30° as indicated by Garside and put it on one of those posts found on the ground, if it is the correct post, and take Garside's [1465] corners and run around the claim—take this compass and illustrate what you meant by that—there is the needle, let us see what you meant by that?

A. There doesn't seem to be any declination or variation plat upon this instrument. The way this compass is built I should say it is now pointing to north—

Q. That wouldn't be the true north?

A. It would be the magnetic north.

Q. Turn off as you indicated yesterday the 30° Garside ran on, the variation, and drop your needle on that and set the machine the way you set it, the

(Testimony of B. D. Stuart.)

way you described to Mr. Hellenthal you ran off these claims?

A. You can't set off the declination as far as I can see on this compass.

Q. You can't set off 30° there?

A. The way it is there now, the sights are pointing practically north and south—that would be north and south assuming that the declination is 30° ; assuming that it is $32-30$ it would like about that way.

Q. Take 30° as Garside made the surveys, by turning it off, you mean putting this on one of the corners and setting your instrument there—now taking his angles through these slides you could run off and get the same property we contend is in the original claim?

A. I would say in a case like that there might be a good deal of error introduced in such a line 1500 feet long from the fact that the declination varies with the place.

Q. Suppose you were going to run that off with a transit, as I understand you take the due north and south on the transit—you described that to the Court this morning—suppose you [1466] take your transit, the change consists of a telescope which you use instead of using these slides on the compass?

A. Yes, sir.

Q. They are substituted for that, are they not?

A. I wouldn't say they are a substitute, but when you use the compass on the transit then they are substituted—when you use the compass to determine the meridian; otherwise they are not.

Q. Now, take the telescope of your transit and

(Testimony of B. D. Stuart.)

there is a hair in there—the same as this fine wire is here in the sight of your telescope?

A. It performs the same function.

Q. And you look through that and that is where you always put your tack on the post—it is where that hair or wire in the telescope places it—that is where you place the tack in the top of the post?

A. I don't understand that—it depends what I am doing.

Q. When you make a survey you frequently put a tack in the top of a post? A. Yes, sir.

Q. That is on the sight that your hair in the telescope presents it?

A. I think so, yes, if I understand the question.

Q. That is a little bit more accurate than looking through this slit on the compass?

A. Yes, sir, very much more accurate.

Q. (By the COURT.) What is the length of that telescope?

A. On mine it is 8 or 10 inches long—I have my transit at the hotel.

Q. Suppose you turn off and shut down at a variance of 30°, [1467] such as Garside made this survey on, and then take your transit and use it instead of your compass and sight it through your telescope instead of sighting through these slits on the compass, I want to understand if that is not a fact that then commencing at one of these corner posts you run virtually over the same ground we contend is in the Lotta?

A. Yes, I think the simple way to express it, if I set out from one corner of the Lotta as it is on the

(Testimony of B. D. Stuart.)

ground and employ my compass as a means of obtaining the meridian and assume a declination such as Garside gives in his notes and turn the angle asked for in his notes, I would practically retrace the line of the Lotta as it is upon the ground, that is, always assuming that the compass is used as a means of obtaining the meridian instead of an astronomical observation.

Q. If Garside used a transit in making these surveys up here from what you have found out, you would say he made some mistakes up there, wouldn't you?

A. I don't know whether he did or not, I wouldn't say; if the stakes that are on the ground are as they were, he made some mistakes evidently.

Q. You know he made a mistake in giving the right length of the Lotta claim?

A. Yes, if the stakes on the ground are as they were and if the Lotta is where we say it is, he made a mistake in his distance of the call to the creek, a very considerable one.

Q. And so far then as you have found out in regard to his call from the post No. 2 down to the creek, you find that wrong or practically the same—his call there is out of joint?

A. The distance measured from the point as I have determined it from Corner No. 2 to the creek, corner No. 2 of the Lotta [1468] to the creek is about 40 feet longer than as called for in the patent.

Q. Do you know in Alaska what has been considered the proper amount to look for of variation per

(Testimony of B. D. Stuart.)

annum with the needle, at this place?

A. Only from what I have learned by looking at the chart of the Coast & Geodetic Survey of this vicinity.

Q. I have one here of Douglass Island, etc., Gastineau Channel—1897—that is one of those plats that you refer to? A. Yes, sir.

Q. I wish you would look on that plat and see what in 1897 they give as a variation.

Objected to as hearsay.

By the COURT.—It purports to be published by authority of the Government, on its face?

A. Yes, sir.

Objection overruled. Defendant allowed an exception.

Q. What does that state the variation was in 1897?

A. There are two different variations given here.

Q. Both the same?

A. Not suite, no, sir.

Q. At different places? A. At different places.

Q. At different places on the ground supposed to be covered in that survey?

A. Yes, sir—there is nothing giving it on the mainland over here—it is just on the island.

Q. Well, what is it?

Objected to as immaterial what it is on the island. Objection overruled. Defendant allowed an exception.

A. The variation at the northwest corner of the island was [1469] 30° and 1½ east in 1897 and the annual increase 2'.

(Testimony of B. D. Stuart.)

Q. Over on the other side?

A. The southeast corner it was 30° and $2/3$ with an annual increase of 2' (two minutes).

The chart is marked for identification Plaintiff's exhibit "KK."

Q. You know that a great many surveys of townships through the different states of the Union, government surveys at that, have been made simply by using a compass? A. No, I do not know that.

Q. Do you remember there is a time they used to survey with what they call a Jacob staff, had a staff they stuck down in the ground and used that to measure courses and distances?

A. That is too long ago for me.

Q. I suppose in your education you would go back to see the improvement of instruments in connection with your trade or profession?

A. I have heard something in regard to it.

Q. Haven't you seen that in your studies and don't you know as a matter of fact that it is part of your education that when they first commenced making surveys they never knew anything about a transit?

A. I don't know when they began making surveys.

Q. How far does your learning take you in your studies? A. I wouldn't undertake to say.

Q. Don't they tell you how this transit came into use and how it was an improvement over the compass in finding the actual meridians and actual north and south?

A. I don't know that it states that implicitly, that is self-evident, though. [1470]

(Testimony of B. D. Stuart.)

Q. Do you want to say that you have not gone back far enough in the history of your profession and trade to know from time to time the improvements of the instruments and mechanical devices, etc., that were used by surveyors in making surveys?

A. Oh, no, I wouldn't want to say that I wouldn't know that they were made from time to time—I know they were, but as to exactly when the transit superseded the compass, I don't remember of having read.

Q. If it wasn't for the local effect in the way of minerals, pieces of steel, etc., that of course deflect your needle and influence it more or less, if it wasn't for those local influences, you could take a compass, providing its sight was as good as that in your telescope, you could run a true line by a compass the same as you could with any other instrument?

A. Not the same, no, sir.

Q. What would make it different?

A. Of course, it wouldn't be as accurate; in the first, at any given point there is what they call a diurnal variation or declination which sometimes amounts to as much as 15 minutes at the same point, on the same day at different times in the day.

Q. If it wasn't for your needle—

A. That would affect your line if you were running by a needle.

Q. And would affect the needle, make it vary from the true north more or less? A. Yes, sir.

Q. Outside of those things—you could take a compass and the needle always points to the magnetic north, unless there is some local influence? [1471]

(Testimony of B. D. Stuart.)

A. I believe it does.

Q. And that would be just so many degrees from the real north?

A. It would be if you want to assume that all of the influences which affect the fluctuation of the needle are eradicated.

Q. I will call your attention to Plaintiff's Exhibit "N" in this case and ask you if you were present at the time Mr. Wettrick and Mr. Hill gave their testimony, in which they testified concerning the tie that is made in this official survey and of which the Lotta is one of the group that was patented, that there is a call from a certain corner on the end lines of these claims to the Ebner mill—did you hear that testimony? A. Yes, sir.

Q. Now, suppose you float the Lotta claim up, if you want to place it on your map here, and put it above where we claim the Lotta is—how is that going to affect these measurements, etc., along the common end line of this whole group of claims?

A. If you change your question I can answer it better—I don't want to float it up.

Q. You found a place that you thought it fits on Gold Creek? A. Yes, sir.

Q. And that takes it up how much further than we claim it is on the ground?

A. About 180 feet.

Q. You know the number of claims included in this official survey, of which the Lotta is one and you have done a whole lot of surveying up there—I will ask you, if the Lotta claim is located where you have fit it in on the creek, [1472] what effect, if any, is it

(Testimony of B. D. Stuart.)

going to have with those mining claims up there?

Objected to as calling for a legal conclusion.

Objection overruled. Defendant allowed an exception.

A. Well, if all the claims were moved in the same way, it would move the whole group of claims, otherwise the claim would overlap what is indicated as the Taku Gold & Silver.

Q. And you know that this group of claims described in this official plat, of which the Lotta is one, is surrounded on every side by surveyed claims and patented claims, long since patented?

A. I believe it is.

Q. Would you consider as a surveyor that if a surveyor was running the common end line, the north-westerly end line of this group of claims that are contained in that plat, the official plat of the survey, should make a call to what is called the Ebner mill, would you consider that of as much certainty as making a call to the creek?

A. For the particular claim in which the tie is called for I would, yes, sir.

Q. That official map or plat which is marked Plaintiff's Ex. "B" is one application for patent and the whole bunch of claims were patented together—do you understand that to be the case?

A. I don't know how they were patented.

Q. Haven't you read over the field-notes?

A. Yes, I have read over the field-notes.

Q. Don't you know they were all patented in one application and one survey?

(Testimony of B. D. Stuart.)

A. The various claims of the group are given separate survey [1473] numbers—I would consider they were distinct survey numbers, and I would consider each claim had a distinct survey judging from that fact.

Q. Have you read over the field-notes and all the descriptive parts of that survey?

A. I believe I have.

Q. Don't you know in that description, that descriptive part, that it takes the Lotta claim and gives its boundary lines and states it is bounded on one side by the Taku lode?

A. I don't remember in detail about that.

Q. You testified yesterday concerning this very same matter and read into the record in this case the boundaries of the Lotta claim at the request of Mr. Hellenthal?

A. I don't remember of testifying to that.

Q. I will ask you this question; Didn't you testify to Mr. Hellenthal yesterday that you were well acquainted with the field-notes of the survey under which the Lotta and this group of claims were patented?

A. I think I read them over, and was pretty well familiar with them—I don't remember all the details, just what was said and what was not, in particular.

Q. Do you remember this portion in the field-notes—I think it has been read in evidence in this case—that it gives a description of the Lotta claim and the other claims in that survey and then stated that the Lotta claim was bounded this way, thus and

(Testimony of B. D. Stuart.)

so, and gave one side of it—I think the Taku lode?

A. I think I remember that, yes, sir.

Q. Now, I will ask you to refer to this exhibit “N” and take this group of patented claims set forth in this certified copy [1474] there of the official plat, the Crown Point, Keystone, Taku and the Lotta—they form almost a square if this exhibit “N” is correct? A. Somewhere near a square.

Q. Now, then, if these claims were all surveyed the same time and you know they are all contained in the same patent with other claims—

A. They are contained in the notes of the patent—all the same patent.

Q. Would you consider a tie from that corner No. 2 of the Crown Point to the U. S. Government monument there would be somewhat of a tie of that whole group of claims?

A. I have mentioned they are, as indicating pretty closely where they lie, with relation to the rest.

Q. But you ran that line and found that line was longer than the one you measured?

A. I believe so, yes.

Q. Now, I will ask you if that is true, assuming that Garside’s course was correct, that would throw the end lines of these claims all a little further to the northwest. A. Yes, to the northwest.

Q. Then, if we take it that the end line of these claims, the measurement is given properly and run on down to the Lotta, it would throw the Lotta a little bit further down the creek.

(Testimony of B. D. Stuart.)

A. If you consider the whole group is a solid square, it would tip out that way.

Q. Instead of putting it further up the creek?

A. Yes, assuming his tie to be correct.

Q. If it has been established in this case by Webster's testimony [1475] and other testimony that the two stakes I described to you a while ago, one of which is the intersection of one of the side-lines of the Webster Millsite with the Taku lode and the one marked 2 and 6, and is called the common corner post of the Crown Point and Keystone, provided they are established on the ground to be the posts set there, and also there is a tie from a corner, I think called Number 1 in the field-notes, a call we will say to the Ebner mill; now suppose the Ebner mill is in the same place now that it was when that survey was made, and then suppose we run on down from the corner 2 and 6, the common corner of the Crown Point and Keystone, and come on down about the same distance that Garside gives in the field-notes and patent, and we strike this corner which is the intersection of the Webster Millsite line and the upper end of the Taku, which is about the same distance that Garside gives it; come on down to another spot, a place that Garside says he makes a call over to the Ebner mill, we find that just about the same; continue on down, we measure off a distance about the same that Garside has given in the field-notes and appears in the patent, we find Corner No. 1 of the Lotta lode claim and that is in the same position it was when the survey was made, what would you say as to

(Testimony of B. D. Stuart.)

whether or not we have properly located the Lotta on the ground?

A. As the stakes are in the ground now?

Q. Yes.

A. According to the notes in the patent, it would not be correct.

Q. But, now, suppose we run those lines, turn off this variation and run it with the same courses and distances as [1476] Garside gives, on that variation set forth in the patent and come down and find those stakes in the same place I have indicated—what would you say as to whether or not the Lotta is not in the ground as we contend it is as determined by a compass survey?

A. I should say the courses now are all right, practically, within certain limits; of course, the end line of the Lotta as it is on the ground is 15 feet short, that is in 300 feet—it is not a trifle by any means.

Q. If the corner posts are there as Garside set them, and have never been moved, he has made a mistake in the distances? A. Yes, sir; he has.

Q. I will ask you this question, whether or not you would be governed by the monuments, etc., put on the ground by the surveyor who made the survey or would be governed by the courses and distances?

Objected to as a matter of law. Sustained.

Q. Now, I wish you would scale off the distances that you have upon your map from Corner No. 1 of the Lotta lode claim to the Ebner mill and then I wish you would scale it on Plaintiff's Exhibit "N," from corner No. 1 to the Ebner mill, and see if they are

(Testimony of B. D. Stuart.)

approximately the same?

A. Pretty close, yes, sir; within ten feet it scales.

Q. Do you know what the patent calls for, the distance—did you ever find that out from the notes in the patent?

A. The distance I should scale? No, I never figured that distance.

Q. Here is this certified copy of the plat which has a scale of 400 feet to the inch—I would ask you to take this certified copy, Exhibit “B,” and scale off the distance from [1477] this corner No. 1 of the Lotta up to the mill as indicated on that?

Mr. HELLENTHAL.—The testimony in connection with the location of the Lotta by reference to any other subsequent surveys, the Taku, Keystone, Crown Point—let the record show that all goes in over our objection.

By the COURT.—It is so understood and exception noted.

A. It scales 490 feet.

Q. What does it scale on your map? A. 510.

Q. And what did it scale on the other? A. 500.

Q. 500 on ours? A. Yes, sir.

Q. You took the centre of the mill?

A. I took the centre of the mill in each case, yes, sir.

Q. This scale is four hundred feet to the inch in the patent? A. Yes, I took that scale.

Q. Now, I will ask you if in your endeavors to locate the Lotta claim on the ground, if you resorted to the field-notes of the Royal lode survey, which is

(Testimony of B. D. Stuart.)

marked on exhibit "N" Survey 238—did you resort to those field-notes in the plat?

A. In my endeavors to locate the claim upon the ground? I didn't attempt to locate it on the ground.

Q. Where did you locate it?

A. I didn't attempt to locate it on the ground.

Q. The Lotta claim?

A. No, sir; except as the stakes are located on the ground and I located the stakes. [1478]

Q. Suppose you had been called upon to locate this claim or to advise where it is on the ground—suppose there had not been any stakes on the ground at all of the Lotta, then what would you have resorted to to make the location of it?

A. I would have resorted to the patent notes, I think.

Q. You couldn't do anything just with the patent notes, unless it was tied up to something?

A. No, not unless it was tied up to something.

Q. Supposing there had not been any stakes on the Lotta claim, and you undertook to locate that claim, would you have looked into the field-notes and said, here is the place, so far to the creek, and another distance to the creek—would you use that or look for some monuments and some other ties on the ground?

A. I would probably look for some other ties in that connection, to see how they agreed one with the other, and if they did not agree one with the other, I would be careful how I proceeded from then on.

Q. You say you didn't attempt to locate the Lotta

(Testimony of B. D. Stuart.)

on the ground. What have you been attempting to do?

A. As I understand you, locating the Lotta on the ground would be setting stakes where it is supposed to be.

Q. You know there is a Lotta claim up there?

A. I know there is supposed to be.

Q. There is a patent granted to a claim called the Lotta? A. Yes, sir.

Q. Have you been trying to find out where that ground is that is in the patent, where it is on the ground up there—had that been your endeavor?

A. In connection with my field work my endeavors were to locate [1479] the stakes on the ground correctly as regards their position in reference to the creek, etc.

Q. Do you want the Court to understand that you contend the Lotta patented claim as a claim is anywhere else on the ground, except where we contend it is by these corner posts?

A. I haven't any contention at all—all I have done is to locate those things on the map and that is all I contend—that that map is correct.

Q. Where is the Lotta lode claim then?

A. That is something I don't know.

Q. Now, in your investigations up there, then, you never went over to the Royal survey or any of these subsequent surveys to see whether they tied up to any of the Lotta stakes or not, did you?

A. I went on to some of the other claims, yes, sir.

Q. Did you go to the Royal lode?

(Testimony of B. D. Stuart.)

A. I was on the Royal, yes, sir.

Q. Don't you know the lode line of the Royal lode is tied up to stake 5 of the Lotta, and then stake No. 5 of the Lotta is in turn tied up to a tunnel that is run on that claim?

A. I don't know that corner No. 5 is tied to any tunnel, no, sir.

Q. Do you know that there is any corner of the Royal lode claim that is tied to a tunnel?

By the COURT.—Is corner 3 tied?

A. Corner 3 is not tied in any of the Lotta notes, no—there is a tunnel on the Royal, but she is tied in the notes to a corner of the Royal.

Q. Don't they say that is a corner also of the Lotta?

A. I don't know whether the notes call for that or not.

Q. Did you hear the testimony of Mr. Hill and Mr. Wettrick on [1480] that point?

A. I believe I did; yes, sir.

Q. You know that they both testified that that corner of the Royal read in the Royal notes that it was a common corner of the Royal and Lotta?

A. I didn't find any corner marked for the Royal at all.

Q. I am asking you if you know what the field-notes of the Royal called for? A. I think I did.

Q. Now, do the field-notes of the survey of the Royal lode claim tie up the Royal lode claim in any wise or in any respect to any corner of the Lotta lode claim?

(Testimony of B. D. Stuart.)

Mr. SHACKLEFORD.—We object to any testimony with reference to the tying of the Lotta claim to a subsequent survey, for the reason that it is irrelevant and immaterial.

Objection overruled. Defendant allowed an exception.

A. I would like to refer to the notes. I wouldn't say from memory.

Q. You don't know whether that is the case or not?

A. I don't remember really whether it makes that corner or not.

Q. Look at exhibit "N" again—you see on the Royal lode what is called the old tunnel?

A. Yes, sir.

Q. Did you hear the testimony of Mr. Hill and Mr. Wettrick in regard to the corner No. 3 of the Lotta and corner 1 which is the lode-line stake of the Royal lode, being indicated as a common corner?

A. I believe I heard that testimony, yes, sir.

Q. You don't know what the field-notes do show on that?

A. I wouldn't say from memory. [1481]

Q. If that is true and that corner in turn is tied up to a well-defined tunnel, an old tunnel, probably caved in some, would that have been any assistance to you in locating the Lotta claim on the ground where it ought to be and should be and where it was originally located when survey was made for patent?

A. With some provisions, yes, sir.

Q. Here is another survey over here, a survey of

(Testimony of B. D. Stuart.)

the Forrest lode claim—did you examine the field-notes of the Forrest? A. Yes, sir.

Q. You know there is a call made to a corner post which states that that is the intersection of the Forrest lode with the Lotta lode claim and you have found that stake, haven't you?

Mr. SHACKLEFORD.—We make the same objection to all this, also that it is argumentative.

Objection overruled. Defendant allowed an exception.

A. I found the corner that was marked corner 4 of the Forrest.

Q. You know that the field-notes of the Forrest and the Forrest lode survey says that it is at the intersection of that line of the Forrest with the side-line of the Lotta claim, don't you?

A. It doesn't say corner 4 of the Forrest is located there, no.

Q. It says the end line of the Forrest intersects the lower side line of the Lotta, just where this stake is—don't the field-notes of the Forrest show that?

Same objection; objection overruled. Defendant excepts.

A. I wouldn't say until I saw the notes. I don't know whether the field-notes call for a post at that point or not.

Q. It calls for the intersection—

A. It calls for the intersection of the lines, yes, sir.

Q. You don't know whether it states there is a post there? [1482] A. I don't remember that.

Q. If you were looking to locate the Lotta on the

(Testimony of B. D. Stuart.)

ground where it is in reality, would any data of that kind be of any assistance to you?

A. It might, and might not.

Q. As I understand it, you have platted in on your exhibit the Colorado lode claim from the field-notes in the patent, and it is indicated by this green line?

A. Yes, sir.

Q. And you measured it off, and found it to be approximately how many feet?

A. The notes call for 1,447. I believe it is.

Q. And the survey of the Colorado is tied up to a corner down here of one of the Last Chance surveys?

A. In the notes it is tied to that.

Q. And don't you know also in the notes of the Colorado that it is tied up on the easterly end to the Royal claim?

A. The Colorado? I believe it does mention the Royal claim, if I remember correctly.

Q. And you know that the Royal lode claim, survey 238-A, was a prior patent and prior survey to the survey made for the Colorado?

A. I believe so, yes.

Q. If there was not fourteen hundred and some odd feet in there, then the distance called for in the Colorado lode claim is a mistake, is it not?

A. It must be.

Q. You couldn't get any more ground than there was left unpatented in there, could you?

A. I don't know whether you could or not.

[1483]

Q. If it is patented on both sides you know enough

(Testimony of B. D. Stuart.)

about surveying to know that you couldn't run a junior patent over a senior patent?

A. You could run it over and set the stakes, but I don't know whether you could get the ground or not.

Q. Did you ever take this commencement corner of the Colorado lode claim, which is also the common corner of one of the Last Chance surveys, it is so described in the Colorado survey—and have you ever run up the distance according to the field-notes in the patent of the Colorado, to find out what the actual distance is between the lower side line of the Royal and your commencement point of the survey of your Colorado?

A. I don't know whether I understand that.

By the COURT.—Did you ever find that stake up on the lower side of the Royal?

A. No, I searched for that a long time and never found that.

Q. You never found it on the Royal lode?

A. No.

Q. Did you ever take the field-notes of the Royal lode and go up there and attempt to locate the Royal lode on the ground? A. I never tried that.

Q. You know in the Colorado survey that a certain distance is given for the intersection of the upper side line of the Colorado with the lower side line of the Royal lode?

A. I think they are supposed to be identical—I think the upper end line of the Colorado is supposed to be on the lower side line of the Royal.

Q. Did you ever see whether or not any distance

(Testimony of B. D. Stuart.)

was given from Corner 5 to the place where the upper side line of the Colorado [1484] intersects the lower side line of the Royal lode?

A. I have noticed that—that is called for in the field-notes, yes, sir.

Q. Then, the Lotta being a prior survey to the Colorado and that distance given, would it be in that way tied up to the Lotta lode claim?

Same objection; objection overruled; defendant allowed an exception.

A. I should say it was tied to the post which is in the ground as corner No. 5 of the Lotta.

(To follow the omission indicated on page 808 of the original transcript [printed record, page 1005] by * * * , being a part of the redirect examination of Mr. B. D. Stuart, by Mr. Hellenthal.)

Q. If you start at the mill, located on the Taku Gold & Silver and run from the mill in accordance with your courses and distances given in the patent, would the lower side line of the Lotta be as indicated, between Corner 5 and 6, as indicated on the ground?

A. It would not, no, sir.

Q. Can you furnish a plat in the morning of that side line as it would fall? A. I can, yes, sir.

Q. Can you draw it on here?

A. Yes, I could.

Q. Would it take very long?

A. It would take a few minutes.

Mr. HELLENTHAL.—I will ask you to do that after I finish my examination. [1485]

Q. Now, what was the magnetic declination given

(Testimony of B. D. Stuart.)

in that government chart presented to you?

A. I believe as I remember that declination was given at the north part of the island as North 30 and $\frac{3}{4}$, something like that.

Q. What is the variation given?

A. East 30 and $\frac{3}{4}$ as I remember.

Q. What is the variation given?

A. The variation is given as 2 minutes per year.

Q. Assuming that the Government is right, would the declination as given in the patent survey or as given in the patent to the Lotta have been correct in 1887?

A. It would have been pretty close to it, it would have been very close to it. If it had been ten years earlier, it would be twenty minutes less, which would make it 20 minutes nearer the 30° than that given on the chart.

Q. How many minutes would it have been off?

A. Probably the average would be $30\frac{1}{2}$ as given in 1887 on the Coast & Geodetic chart or survey and then a variation of two minutes for ten years would be 20 minutes, which would make it ten minutes off.

Q. Then Garside's variation was right within ten minutes in 87? A. According to that.

Q. Did you take the magnetic variation when you were up there making a survey last fall?

A. Yes, sir.

Q. What did you find it off?

A. $2^{\circ} 30'$ difference between what I obtained and what was given in Garside's notes.

(Testimony of B. D. Stuart.)

Q. Now, if the stakes of the Lotta now standing in the ground [1486] were set by a surveyor who adjusted his transit and found his true meridian by means of the compass and assuming the variation given in the patent, when were those stakes set?

Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Plaintiff allowed an exception.

A. If they were correct, it would seem that they had been set—that is just judging from the data you give me—it would be since 97 because the difference that would be obtained from figuring according to the variation given by the Coast & Geodetic Survey wouldn't agree with the difference as I find between the true course and the course as given in the patent notes, which is 2° and $30'$.

Q. When does the magnetic variation change in the district, if that Geodetic Survey is correct?

A. If there is a difference as shown now of 2° and $30'$ between 87 and the present time that wouldn't be accounted for by the annual variation which they give, which is only two minutes a year.

Q. When did it change—that was right in 97?

A. It must have been changed between 97 and the present time.

Mr. HELLENTHAL.—Mr. Stuart, put that on the map.

(To cover the omission indicated on page 822 of the original transcript [printed record, page 1020], indicated by the line—"Mr. Stewart recalled—testimony entirely regarding Lotta.")

(Testimony of B. D. Stuart.)

Mr. B. D. STUART.

(By Mr. SHACKLEFORD.)

Q. Have you put the lower side line of the Lotta and the northeasterly end line of the Lotta on this Exhibit No. 7? [1487]

A. Southeasterly it is.

Q. Southeasterly end line, yes? A. Yes, sir.

Q. In accordance with the tie as indicated from the Ebner mill—what was that tie?

A. According to a connection—that is, following out that tie from the centre of the Ebner mill to Corner No. 1 of the Taku Gold & Silver claim, and then following out according to the official notes along the northwesterly boundary or end line of the Taku Gold & Silver and the Lotta and then out along the southwest side line of the Lotta, according to these same notes, which is in lead pencil.

By the COURT.—Corner No. 1 of the Taku Gold & Silver would be the lode line?

A. The one marked Number 1 is the lode line post.

Q. How far up the creek, at the intersection of the side line with the creek, will that throw that lower side line of the Lotta?

A. Measured perpendicularly to where?

Q. The side line of the Lotta as indicated by the stakes—is it across the creek?

A. It is 27 feet.

Cross-examination.

(By Judge WINN.)

Q. I thought yesterday when you left the stand that you were to run out the northwesterly end line

(Testimony of B. D. Stuart.)

of the Lotta, Taku, Keystone and Crown Point lode claims to find out where you contend that line is, but I guess that was not the understanding you had?

A. No, sir, I had no understanding about that.
[1488]

Q. I will ask you if by taking the monuments that I referred to yesterday that Ed Webster testified concerning—you know those two monuments without repeating them, and taking the mill as a tie, if you have ever attempted to run down that line to see whether or not the corner No. 1 of the Lotta would be found exactly where we contend it is?

A. I have not tried that.

Q. This line that you put on the map this morning is the lower side line of the Lotta, according to what did you say?

A. Starting at the centre of the Ebner mill, ran out the tie to the Corner No. 1 of the Taku Gold & Silver as the patent notes call for and then ran out the rest of the northwesterly end line of the Taku Gold & Silver and the northwesterly end line of the Lotta as the patent notes call for, down to Corner No. 6 of the Lotta; and then ran out the southwesterly side line in accordance with the patent notes. Those are the tie and the courses around these claims platted according to the patent notes.

Q. Now, that line is drawn to a different variation you took from that which is in the patent notes?

A. No, it is a different course.

Q. But you run out on a variation of what?

A. I didn't use any variation at all—I didn't con-

(Testimony of B. D. Stuart.)

sider the ties in the question at all.

Q. You didn't consider the variation at which Garside made the survey?

A. Not at all—I considered only the true meridian.

Q. When you refer to the tie, of what claim did you say? A. The Taku Gold & Silver.

Q. That is the same as the Taku lode on this exhibit? A. Yes, the same thing. [1489]

Q. What tie do you mean?

A. From the centre of the Humboldt mill to corner No. 1—I mean the Ebner mill.

Q. From the centre of the mill?

A. That is the tie I was instructed to use.

Q. To corner what?

A. Corner No. 1—that is the northwesterly lode line of the Taku Gold & Silver.

Q. Then, what did you run?

A. Starting from the centre of the mill and following the patent notes according to the tie from the Ebner mill to the Corner No. 1 of the Taku, and then following the patent notes further on around to the southeasterly end line of the Lotta.

Q. Then, you run the line from Corner No. 6?

A. According to the patent notes.

Q. According to the patent notes and without any variation, according to the true meridian?

A. According to the true meridian and the courses and distances as called for in the patent notes.

Q. If you had run that line according to the variation that Garside has it, whether you would run it with your chain or run it in the manner I described

(Testimony of B. D. Stuart.)

yesterday by using either a transit or other instrument, would you run it along the same lines we have, where we claim the Lotta is?

A. By using the compass as a means of determining the meridian you would.

Q. Suppose you took your transit and just turned off 30° variation the same as Garside has, use your telescope for the same sighting purposes you would use those two slits [1490] through the compass, I want to know if you wouldn't get the same line we have—that would be the same as using the compass,—you would be using the meridian the same as you would your compass?

A. By using your transit and obtaining your true meridian as it is required by astronomical observation, you would obtain the lines as I have platted them in on exhibit 7.

Q. Then Garside, if there is a mistake in that course, it would have been made in your judgment because he didn't take the true meridian and run it according to the true meridian?

A. I wouldn't care to say how the mistake was made.

(By Mr. HELLENTHAL.)

Q. You located the Ebner mill upon the ground yourself and if the magnetic declination at the time Garside made the survey was 30° , it wouldn't make any difference whether he ran with a compass or with a transit, would it?

A. Not if he did the work correctly and the variation was that at that time, that would be all right.

(Testimony of B. D. Stuart.)

(By Judge WINN.)

Q. Taking and platting the Lotta claim as we determine it is on the ground, I want to ask you if there wouldn't be part of your mill dam on the patented Lotta claim, that is the defendant's company's mill dam, not the mill dam but dam for the flume?

A. I think I explained that yesterday—about the abutment you mean?

Q. Yes.

A. That abutment, I explained, that runs diagonally behind that boulder— [1491]

Q. I will ask you as a matter of fact if the defendant company's dam as extended across the creek it is not 78 feet in length?

By the COURT.—He answered the total structure was 78 feet.

A. I said 65 feet, I think—I measured from my point 107 which as I remember is the north end of the dam—I wouldn't say as to the exact length of it because I am measuring from my transit point there which I remember as being behind that boulder I spoke of.

Q. I will ask you whether or not the tie to the mill, the Ebner mill, does not bring Corner No. 1 just exactly where Mr. Hill and Mr. Wettrick have testified it is and where we contend it is on the ground?

A. Not exactly, no, sir.

Q. What is the approximate difference?

A. In the neighborhood of ten feet.

Q. Where does it bring corner 6 of the Lotta, the tie to the Ebner mill?

(Testimony of B. D. Stuart.)

A. About the same distance off, about ten feet.

(By Mr. HELLENTHAL.)

Q. That is assuming that you commence at the centre of the mill?

A. Assuming I commence at the centre of the mill and follow out the patent notes.

Q. What is the length of the dam as it actually exists on the ground? The dam across the creek?

A. I think I scaled that yesterday as 25 feet.

Witness excused. [1492]

[Testimony of R. G. Whalen, for Defendant.]

(To follow the omission on page 824 of the original transcript [printed record, page 1021] indicated by * * * , being part of the direct examination of R. G. Whalen by Mr. Hellenthal.)

Q. Did you find stake Number 5 and 6 of the Lotta upon the ground as testified to?

A. I find posts that were marked as testified to.

Q. Also a post that was marked for the intersection of the Forrest lode and Lotta?

A. I find a post marked corner No. 4 of the Forrest on one side and S. 87 on the other side, alongside the road.

Q. Is that line indicated there as the line connecting those points accurately delineated on exhibit 7?

A. Yes, sir.

(To following the first omission on page 829 of the original transcript [printed record page 1026] indicated by * * * and following the words, "Cross-examination: By Judge Winn," being part of the

(Testimony of R. G. Whalen.)

cross-examination of the witness R. G. Whalen.)

Q. How long has it been since you first knew where any of these stakes are located on the Lotta claim?

A. The first time I saw any of these stakes was last August, the last of August, last year.

Q. What stakes did you discover upon the Lotta claim, regarding the exterior boundary lines, last fall?

A. I saw the stake marked corner No. 4 of the Forrest which is claimed to be on the intersection with the lower side line of the Lotta and I saw the stake marked post No. 5 and the post marked, the stake marked Post No. 4 and the stake marked post No. 3—those are all I saw in August; I am not sure that I saw them in August or saw them there afterwards,—
[1493] it was somewhere in there.

Q. Give me the date you did see them.

A. I saw the corner No. 4 marked Corner No. 4 of the Forrest in August or somewhere around there and I saw the flag sticking up over the one marked Corner No. 5 of the Lotta at that time, but I didn't examine the stake until later, until after the trial in the case No. 803, I think.

Q. You remember you made an affidavit in that case? A. I did.

(To follow second omission on same page indicated by * * * and being a continuation of the cross-examination of Mr. Whalen by Judge Winn.)

Q. At the time the application was made for a preliminary injunction in this case, you were not directed prior to the hearing of that case to go upon

(Testimony of R. G. Whalen.)

the Lotta to see whether you could discover any stakes or not?

A. The directions I had prior to that hearing were to find some stake of the Idaho or some stake of one of our claims and run a line up to the location notice and see where it was located, the location notice of the Mulligan water right.

Q. You did find a stake then of the Idaho?

A. I did.

Q. And then you run a line up to the stake that the notice of Mulligan was posted on in Gold Creek or on the bank of Gold Creek, the water notice?

A. I did.

Q. I ask you if that is your signature on this affidavit? A. It is.

Q. It is filed in case No. 803-A; do you know what you set out [1494] in that affidavit about running the Idaho line up just as described?

A. I haven't seen that since then—I haven't a clear recollection of just what I said.

Q. When the hearing was had on that application, you had not done any more in regard to finding out where the Lotta was located on the ground except to run this line from one corner of the Idaho up to the notice posted by Mulligan in the creek, that is all you were requested to do?

A. That is all the surveying I done, yes; I had seen that stake on the road and had sighted across just by eye to the flag.

Q. And then you made this affidavit, a portion of which reads as follows: You are a civil engineer by

(Testimony of R. G. Whalen.)

profession; that you together with your co-affiants made an actual survey upon the ground for the purpose of obtaining exactly the location of the southerly side line of the Lotta mining claim—that was one of your objects? A. Yes, sir.

Q. And that the Lotta survey is one of a series of surveys all made in that locality, and ties one to another in their various ways; that he and his co-affiants in running their lines to establish the said lower side line of the Lotta claim first commenced at Corner No. 5 of the Idaho claim, said claim being one of a series of claims, the surveys of which are tied together as above stated; that they did run the necessary lines from that stake to the intended point of diversion in Gold Creek referred to in the answer of defendants and figuring from the location of said stake with reference to the other surveys, including the survey of the Lotta, such intended point of diversion [1495] would be 78 feet below the southerly side line of the Lotta claim and on the Oregon claim—that is your affidavit?

A. Yes, sir.

Q. Then, you did make some efforts before the preliminary hearing to locate the Lotta lode claim on the ground?

A. Not to locate any of the stakes of the Lotta because I couldn't identify them, but to locate as it is given in there, I did.

Q. As a surveyor if you went on the ground to discover where the Lotta claim is exactly located, you wouldn't begin to look up any monuments or stakes

(Testimony of R. G. Whalen.)

to find out where it is located?

A. As I said I was directed to do just what I did.

Q. But did you state in your affidavit that you went on there to discover the lower side line of the Lotta lode claim?

A. I went on there to discover where the lower side line would be figured from this post, with that understanding I did.

Q. The post of the Idaho?

A. The post of the Idaho.

Q. As I understand it, you went on there to locate the Lotta claim, the lower side line of the Lotta claim? A. Yes, sir.

Q. But you want it understood that you had special directions to go on there and only make a survey from one corner of the Idaho up to the stake in the creek?

A. I was instructed to do nothing else but that—no, sir.

Q. I will ask you, as an expert, as you have attempted to qualify—you are a mining engineer and surveyor—I will ask you if it is not a fact that when a surveyor undertakes [1496] to go upon the ground and locate a mining claim, the boundaries of which are in dispute, if the first thing the surveyor does not do is to look up the ties of that claim and also to see whether there are any monuments on the ground? A. At that time—

Q. I don't mean at that time,—I am asking you now as an expert witness—you understand the question?

A. I understand the question—I would start from

(Testimony of R. G. Whalen.)

some point I knew, tie in the corners that I might find in the course of that survey and if I had unlimited time, I certainly would tie in all the corners and the creek and the natural monuments and permanent objects, but at that time I had one afternoon to do that.

Q. You have never been called upon as a surveyor of this company in the employ of the company to make such a survey as you have indicated?

A. I never have, no, sir.

Q. I understand then generally, in placing a creek upon a map or plat, that unless there is some special object for sketching that creek in exactly as it is upon the ground, that you don't pay so much attention to that?

A. It depends on the character of the map we are making.

Q. If it is a map you are making for a lawsuit and want to locate the creek, you would make some special efforts to locate it?

A. If it is a map that is intended for any permanent purpose I would make special efforts to locate every object as carefully as possible.

Q. This map that has been exhibited to you, Plaintiff's Ex. "II" that was used in the defense to our application for a restraining [1497] order—I believe you said you drew that?

A. I traced that from an old map, yes.

Q. It is simply a tracing from an old map you have in your office? A. Yes, sir.

Q. Who made that map in your office?

A. I don't know.

(Testimony of R. G. Whalen.)

Q. You heard Mr. Kinzie testify the other day on the witness-stand? A. Yes, sir.

Q. Is that the same map he referred to?

A. I believe it is.

Q. At how many points on Gold Creek have you measured the width of the creek, at the level of the surface of the water, that is taken from your dam say up to where the creek crosses the upper side line of the Lotta claim as we contend it is on the ground?

A. I didn't measure any with a tape.

Q. You didn't measure any with a tape?

A. Not myself, no, sir.

Q. Then, the width, etc., that you are giving there is from an estimate? A. Yes, sir.

Q. Do you know just how long your dam is across Gold Creek—did you help Mr. Stuart measure it?

A. Well, I was in the vicinity when he did measure it—I did not hold the tape, no.

Q. Do you know what measurement was obtained?

A. Only from his testimony.

Q. You didn't make any measurement of it yourself?

A. No, I didn't make any measurement of it myself, but I estimated [1498] it.

Q. When Mr. Stuart measured it from point to point, to what point did he measure it—what kind of an anchorage have you?

A. At the north end it is anchored upon a large boulder and is covered with dirt and at the south end it is anchored with hitches in the rock.

Q. It was between those two anchorages you measured the dam?

(Testimony of R. G. Whalen.)

A. I think it is between the large boulder and the hitches in the rock, I believe—I wouldn't be sure.

Q. You heard Mr. Stuart's testimony—he said it was either 60 or 65 feet—65 feet—what was the necessity of having a dam that wide there when the bed of the creek is only 25 feet wide?

A. That dam runs up the creek—I don't know the reason it was built there—I wasn't there when it was built.

Q. You know at high water the creek would be much higher than you estimate it, all along those points, would it not?

A. I tried to give an estimate at high water when I gave the bottom of the canyon—that would be the creek at high water.

Q. You never did measure the width of the creek up here where it crosses the upper side line of the Lotta?

A. That side line is not turned on the ground measured, only as it is shown on the map.

Q. Taking it for granted that the side line is where we contend it is and as placed on your exhibit here, according to our exhibit—have you ever measured it at that point where it crosses the upper side line?

A. I have never measured it with a tape, no.

Q. Did you help Mr. Stuart in making this map?

A. I did. [1499]

Q. All of them that he testified concerning? Exhibit 6?

A. I did nothing on exhibit 6—I don't think it has been offered.

By the COURT.—That is a map of the Lotta

(Testimony of R. G. Whalen.)

alone, exhibit 6? A. Yes, sir.

Q. Did you help him go up there and make this traverse line up the road and make these measurements as he indicated and established his stations along the creek to find out where the creek was on the ground?

A. I was with him; the traverse line on the road had been run before I went there, but I was with him when he occupied most of those stations and checked the angles and I was with him when he ran down to the creek and on that traverse up the creek and I was with him when he tied on to the traverse, on the Lotta—I sighted the points.

(To follow the omission on page 833 of the original transcript [printed record, page 1031] indicated by * * * being part of the cross-examination of Mr. Whalen by Judge Winn.)

Q. Briefly state to the Court how you ran that line to Corner No. 5 of the Idaho—state how you ran it up there.

A. Starting at Corner No. 5 of the Idaho marked 5 on Defendant's Ex. 7, I set a station just north of the junction of Snowslide Creek and Gold Creek, at which point we made our solar observation and then set a point just north of the cabin on the Alaska-Juneau and the next station was across Gold Creek, at about the point "d" in Gold; the station after that was about the point "c" in creek and from there we went up on the old Jualpa high line flume, ran around that flume to the intake of that flume and across the creek [1500] and by the creek we sighted to the stake at the Mulligan water notice.

(Testimony of R. G. Whalen.)

Q. A traverse line? A. A traverse line.

Q. You didn't run a straight line?

A. No, sir.

(By Mr. HELLENTHAL.)

Q. When you made your plat in that injunction suit, you located the southerly side line of the Lotta by starting from 5 in the Idaho and platting it in accordance with the patent notes of the Colorado claim? A. I did.

Witness excused (repeated).

**[Testimony of G. C. Winn, for Defendant
(Recalled).]**

(On page 1040 of original transcript [printed record, page 1259] in place of the following line near the bottom of said page, to wit: "G. C. Winn, recalled. His testimony is entirely regarding Lotta," substitute the following:)

G. C. WINN, recalled:

(By Mr. SHACKLEFORD.)

Q. You are the United States Commissioner?

A. I am.

Q. I wish you would turn to your record of the Lotta and Taku Gold & Silver locations.

A. I am not sure I have the Lotta in this book—I have the Taku Gold & Silver.

Q. You have that record? A. I have.

Mr. SHACKLEFORD.—We desire to offer this in evidence with the privilege of substituting a certified copy. I will state [1501] the purpose of the location notice is to show that the Lotta location is a junior location to the Taku Gold & Silver.

By the COURT.—What is the difference in the dates?

Mr. SHACKLEFORD.—The Lotta location is dated May 24, 1884, and the Taku Gold & Silver is December 30, 1880.

Judge WINN.—We object to this as incompetent, irrelevant and immaterial to prove any of the issues in this case, and it is not shown that this is the notice under which this claim was abandoned. Your Honor will remember the evidence in this case that there was claim after claim staked out and abandoned, etc. I don't think this evidence should be allowed to go in for that reason; and furthermore the patent itself is the best evidence of what ground was patented, etc. The notice of location is admitted as Defendant's Exhibit No. 64. Plaintiff allowed an exception.

Mr. SHACKLEFORD.—It is the location notice of the Taku Gold & Silver by R. T. Harris and Joseph Juneau in Number 1 of Lode Claims at page 118 and we will substitute a certified copy. And we also offer a certified copy of the location of the Lotta lode, dated May 24, 1884.

Judge WINN.—I object to it as incompetent, irrelevant and immaterial for any purpose in the case.

Objection overruled. Plaintiff excepts.

It is marked Defendant's Exhibit No. 65 and admitted.

Mr. SHACKLEFORD.—I will ask the Court to enter an order accepting the various exhibits, some of them may have been omitted. Exhibit No. 49, which is the geological survey plat, I wish to withdraw.

Judge WINN.—I will object to each and all of the

exhibits offered and make the objection broad enough to cover them all as incompetent, irrelevant and immaterial and not tending [1502] to establish any of the issues in the case, and especially those maps and plats that were offered in evidence, that they show no ties to any monuments whatever, and the claims attempted to be located on there would be merely floating claims, and having no ties in the manner in which they attempt to locate them, they would be of no materiality as evidence in the case.

Objection overruled. Plaintiff excepts.

Mr. HELLENTHAL.—There are certain exhibits we will have to-day of the Borean pit, as to the condition that Stuart found there after his excavation. With the reservation as to Mr. Stuart and that certain photographs of the Borean pit that are now being prepared may be admitted, defendant closes his case.

By the COURT.—It is understood that the defense is closed except as to those photographs and Mr. Stuart platting in the Lotta according to Mr. Ebner's testimony.

Rebuttal.

(On page 1045 of the original transcript [printed record, page 1264] in place of the following: "Martin George sworn. His testimony is entirely regarding the Lotta"—insert:)

**[Testimony of Martin George for Plaintiff
(in Rebuttal).]**

MARTIN GEORGE, called and sworn as a witness in behalf of the plaintiff, in rebuttal, testified as follows:

Direct Examination.

(By Judge WINN.)

Q. Did you bring up the field-notes, etc.?

A. Yes, sir.

Judge WINN.—I haven't had an opportunity yet to get a certified [1503] copy of the survey and field-notes of this group of claims that was patented, including the Lotta, and there has been so much evidence in this case one way and another, that is, talk among the attorneys more than evidence about these matters and thinking that the whole survey ought to go in, I will now offer in evidence the field-notes and survey as just indicated and will ask opportunity to substitute a certified copy—I can't take this from the surveyor general's office—I don't suppose there will be any objection to my substituting a certified copy later on.

Mr. HELLENTHAL.—No objection as far as the certified copy is concerned; we do object, however, to receiving the field-notes in evidence—I object to the reception of the notes in evidence as incompetent, irrelevant and immaterial, and that all the matters and things referred to in the field-notes and set forth in these notes have merged in the patent and that the field-notes themselves of the surveyor general's office are merely an evidentiary matter upon which

(Testimony of Martin George.)

the patent which is the official final judgment of the department is based.

Objection overruled. Defendant allowed an exception. When the certified copy is received it will be marked Plaintiff's Exhibit "OO."

Judge WINN.—It is the field-notes of United States surveys, the way it is numbered here—87, 88, 89, 90, 91, 92 and 93.

Q. It don't seem to have any filing mark on it of your office? A. No, not on this.

Q. You have been in the surveyor general's office since what date, Mr. George?

A. In Alaska? Since 1901.

Q. And what do you say is your duty in that office? [1504] A. Chief draughtsman.

Q. I will ask you if surveys of like nature are turned into the surveyor general's office at the present time, that is, like the survey of this group of claims that the Lotta is included in? A. No, sir.

Q. Just state to the Court what different methods now, if any, you have of numbering surveys in that respect—where there is more than one claim surveyed at the same time. Objected to.

Judge WINN.—The purpose of this is to show that this survey is all one survey and they number them now and have been for a great many years last past, where there is a group of claims included in one survey, they only give it one number, but evidently at the time this was done, it was all considered one survey, but they call them lots and give each one a different number.

(Testimony of Martin George.)

Objection sustained. Plaintiff allowed an exception.

Q. I will ask you if at the present time and since you have been in the office, when a group of claims are surveyed all in one survey for a patent, if the claims all go in under the one number of the survey or each claim under a different number?

Same objection; objection sustained. Plaintiff allowed an exception.

Q. I will ask you if this survey, the field-notes of which we have just identified by you and in which the Lotta claim is included in the group, as to whether or not in your office, as a matter of fact, that is considered as one survey or as many different surveys as there are claims in the group? [1505]

Objected to as immaterial; objection overruled. Defendant allowed an exception.

A. That is considered as many surveys as there are in the group in the office or the records are kept that way, although it is under one number—that is, one entry and surveys number 87, 88, etc.

Q. They are all surveyed in a group?

A. Yes, sir.

Q. Now, I will ask you if, later on in your office, in these surveys, in making them this way, if there has been any change in the rule as to giving them separate numbers—each claim, or did you give the whole survey just one number?

Objected to; sustained. Plaintiff excepts.

(By Mr. HELLENTHAL.)

Q. You state that these surveys 87, 88, etc., are

(Testimony of Martin George.)

considered in your office as separate and distinct surveys?

A. They are separate and distinct so far as the numbers are concerned but they are all made in one entry.

Q. But they are considered as distinct surveys?

A. Yes, sir.

Q. You have been connected with surveyor general's offices before you came here?

A. Yes, indirectly—wasn't employed in the office.

Q. How long have you been directly or indirectly connected with this work of surveying public land surveys, etc.? A. About thirty years.

Q. Do you know how public land surveys were made back in the eighties by surveyors, whether by the use of the compass or by the use of the transit? [1506]

A. I never knew they were ever made by anything but the transit.

Q. What is the date of this? A. 1888.

Q. In 1888, were you then connected with the business of surveying public lands?

A. Yes, I was with my brother in Idaho at the time.

Q. You were in the surveying business at that time? A. Yes, sir.

Q. And had been for how many years prior to that time? A. Since about the early eighties.

Q. The courses and distances as given in these field-notes of the Lotta are considered as true courses, are they not? A. Yes.

(Testimony of Martin George.)

Q. And as surveyed upon the ground by means of a transit? A. Yes.

Q. Do you know what the regulations of the land department with reference to this matter of surveying in the past were, back in the eighties?

A. Lines had to be deflected from the true meridian.

Judge WINN.—Do I understand you were surveying in Alaska in the eighties? A. No.

Judge WINN.—I objected to that question and move to strike the answer—the rules and regulations would be the best evidence.

By the COURT.—After this length of time, in the absence of showing regarding the printed regulations, you may enquire.

Objection overruled. Plaintiff allowed an exception.

Q. Do you know what the regulations of the land department [1507] back in the eighties and in 88 were, with reference to the making of surveys of public lands and mineral surveys, as to whether the surveyor surveyed those with the use of a transit or with a compass?

A. To the best of my knowledge with a transit.

Q. What were the regulations as to how the courses must be given?

Same objection; objection overruled. Plaintiff excepts.

A. The lines were deflected from the true meridian.

Q. How was the true meridian ascertained?

(Testimony of Martin George.)

A. By astronomical or solar observation.

Q. And the lines as given in the surveys are read as deflected from the true meridian?

Same objection; objection overruled. Plaintiff excepts.

A. Yes, sir.

(By Judge WINN.)

Q. In what state were you surveying at the time that Mr. Hellenthal is questioning you about?

A. In 1888?

Q. Yes— You don't know anything about the rules and regulations in Alaska at that time?

A. No.

Q. You have searched the office and have not been able to find anything back of the two pamphlets you have brought up? A. I have, yes, sir.

Mr. HELLENTHAL.—Aren't the courses as given in the field-notes and patents read as true courses?

A. Yes, sir.

Q. I will hand you Plaintiff's Exhibit "B," which is a certified copy of the map and plat under which these claims were patented [1508] and I will ask you, Mr. George, if the rules and regulations governing surveys in your office now, when a group of claims is surveyed together under one number, if you accept a survey with just one of the group of that survey tied up to a United States monument?

Mr. HELLENTHAL.—We object to that as incompetent, irrelevant and immaterial.

Objection sustained. Plaintiff allowed an exception.

(Testimony of Martin George.)

Q. I will ask you to look at that map and plat and state to the Court which one of those claims is tied up to a United States monument.

A. The plat shows a corner of the Crown Point to be tied to the monument and we should consider the survey was tied to the monument.

Q. The entire survey? A. Yes, sir.

(By Mr. HELLENTHAL.)

Q. The map shows the corner of the Crown Point tied to the monument? A. Yes, sir.

Q. Which one? A. Corner Number 2.

Q. Corner Number 2 of the Crown Point?

A. Yes, sir.

Q. That ties the entire survey in a way to the monument?

A. We should consider it so under the old surveys.

Q. The only survey, however, that is actually tied is Survey Number 90, the Crown Point?

A. Yes, sir.

Q. That is the only survey that is tied to the mineral monument [1509] on that plat?

A. Yes, sir.

Q. And the only corner in the entire group of surveys that is tied is corner No. 2?

A. Directly, yes, sir.

Q. There is no other corner tied to the monument in that entire survey? A. No, sir, not directly.

Q. You could calculate by calculating the courses and distances from that corner to other corners?

A. Yes, sir.

Q. But none of the other corners are tied to the

(Testimony of Martin George.)

mineral monument? A. Not directly, no.

Q. And not indirectly—because by a mere matter of calculation— A. A matter of calculation.

Q. Which one of those surveys is the first survey?

Objected to as incompetent, irrelevant and immaterial. Sustained.

Q. If the Lotta is a survey made prior to the Crown Point, then it is altogether a matter of calculation as to where the Lotta lies, with reference to the mineral monument, from that plat?

A. That should be explained before answering—as a matter of fact a surveyor would naturally go around the boundaries of the whole group before he would start to make the final survey and he would stake them off from calculations.

Q. The tie to the mineral monument is only one corner of the entire group? A. Yes, sir. [1510]

Q. And the mineral monument locates but one corner? A. One corner.

Q. (By Judge WINN.) You, however, don't change your position, the proposition that you consider that whole survey tied up by this one tie?

A. Yes, I consider it tied up.

(By Mr. HELLENTHAL.)

Q. This corner No. 2 is not one of the outside corners?

A. Yes—it is within the boundaries of one of the other surveys—it is inside the boundaries of another claim.

Q. And not an outside corner of the group?

A. No.

(Testimony of Martin George.)

Q. It is not a corner outside of other ground?

A. No.

Witness excused.

Sur-rebuttal.

**[Testimony of R. D. Stewart, for Defendant
(Recalled in Sur-rebuttal.)**

(To supply the omission on page 1103 of the original transcript [printed record, page 1328] indicated by * * * and following the words, "Mr. Stewart, Recalled, by Mr. Shackelford.")

Q. (By Mr. HELLENTHAL.) Did you trace the Lotta claim on the ground in accordance with the testimony of Mr. Ebner, that is to say, allowing that the creek at the falls near corner No. 2 of the Lotta had changed to the left going up the creek a distance of some 25 feet? A. I did, yes, sir.

Q. How is the line so drawn indicated on Exhibit No. 7?

Judge WINN.—We make the general objection that this is incompetent, irrelevant and immaterial and is making a location [1511] on some supposition and is not sur-rebuttal.

By the COURT.—The objection will be overruled; it is sur-rebuttal under the reservation made at the close of their case.

Plaintiff allowed an exception.

Q. I mean, have you platted the Lotta, considering Mr. Ebner's testimony that the creek had moved 25 feet, in accordance with the field-notes as indicated in the patent of the Lotta, observing the ties to the creek and the courses and distances as given in

(Testimony of R. D. Stewart.)

the patent? A. I have.

Q. How is the claim indicated on exhibit 7 so platted?

A. I have drawn it with a lead pencil and marked the northeast side of the claim, northeast side line of the Lotta, according to patent notes, assuming Gold Creek to be shifted to the northwest 25 feet, and have also marked in lead pencil where the centre of the creek would lie along in the vicinity of the falls if the creek were shifted that distance to the northwesterly on exhibit 7.

Q. You don't understand me exactly—Mr. Ebner's testimony was that the creek had shifted, was at the present time 25 feet to the left of where it was twenty years ago—that would put your creek on the other side?

By the COURT.—No, Mr. Ebner testified that this slide shown on one of the pictures would throw it over—he had the change at the top of the falls, simply the falling out of this rock, but the bottom would be more of a difference.

A. I see what you mean—I would have to change that. I will rub that line out, I can put another one in and mark it, assuming the creek had shifted 25 feet the other way. Shall I [1512] mark that void there?

By the COURT.—You may do that.

Q. Have you now platted upon the map the Lotta claim, assuming that the claim has shifted to the left 25 feet as you go up the creek and platted the same in accordance with the field-notes as indicated in the

(Testimony of R. D. Stewart.)

patent, preserving the ties to the creek and the course and distance given in the patent? A. I have.

Q. How have you marked it on exhibit 7?

A. It is indicated with a lead pencil mark—it is marked the northeast side line of the Lotta according to patent ties assuming Gold Creek to have shifted northwest 25 feet.

Q. How far down the creek does that throw the claim from where it would lie if platted without making allowance for the shifting of the creek?

A. About 20 feet.

(To supply the omission on page 1105 of the original transcript [printed record, page 1331] indicated by * * * , being part of the cross-examination of Mr. Stuart by Judge Winn.)

Q. Have you got the falls marked on this exhibit?

A. Yes, the base of the falls and I have the rapids through the canyon there indicated.

Q. Where you have located the Lotta claim now, you have located it way up above the falls, the upper side line, that is, preserving both those ties and assuming that the creek had shifted at that point?

A. Mr. Ebner's testimony was, I believe, that it had shifted along the falls. [1513]

Q. He testified just below the falls they had shifted.

A. This is the base of the falls—this is below the falls; I assume it had changed here (indicating).

Q. The upper side line of the Lotta as you have it now is way up above the falls, is it not?

A. The side line of the Lotta is there, yes, sir; in

(Testimony of R. D. Stewart.)

order to preserve the distance of 40 feet from the northwest end line of the Lotta to the creek and at the same time preserve a tie of 1200 feet from the southwest corner of Gold Creek, and maintain the position of the creek according to the distances, that has to be done.

Q. Didn't you understand Mr. Ebner's testimony to be that the change was made just down below the falls, and when Mr. Shackleford was questioning him there was talk about water coming down from the falls and dropping down there and making a change below the falls?

A. Yes, that is what I assume.

Q. There isn't any one of your lines—the upper side line is way up above the falls, so you couldn't put it in there according to Mr. Ebner's testimony and retain the part of the testimony where he said the change was made below the falls?

A. There is the base of the falls.

Q. There is the base of the falls, yes, but Mr. Ebner said it was down below there the change was made—you have the upper side line way up above the falls?

Objected to as argumentative and not according to Mr. Ebner's testimony.

Q. If Mr. Ebner's testimony was that the change was down below the falls, where the water struck the ground from the falls, [1514] where it struck the bed and that had washed it out, then you have got your side line that you have placed on here in no position at all that is compatible with his testimony?

(Testimony of R. D. Stewart.)

A. I have assumed the position—I assumed the shifting of the creek in the general vicinity of the falls; assuming a change right at the falls alone would leave the claim in the same position that the green line shows as on there originally.

Q. Didn't you understand Mr. Ebner's testimony to be that from where the water falls down from the falls and a little below the falls, that he contended that the corner post was originally in that position and then he testified that where the original post should be according to our location of the claim that it washed out about 25 or 30 feet, something of that kind—didn't you understand his testimony to be that? A. No, I didn't understand it to be that.

Q. If that is true, that his testimony was that it was down below the falls that the change had been made, then you having your upper side line way up above the falls, it wouldn't be compatible with his testimony in that respect—leaving everything out about the field-notes but taking Ebner's testimony?

A. I understood Mr. Ebner's testimony that the change took place at the base of the falls, where the boulder projected up above the falls he showed the centre of the creek.

Q. If Mr. Ebner's testimony was that the change had taken place down at the foot of the falls and about where we contend that the corner post No. 2 of the Lotta should be and it had changed at that point, why then your drawing would [1515] not be compatible with his testimony—if that is his testimony, would it?

(Testimony of R. D. Stewart.)

Mr. SHACKLEFORD.—We object to the question as argumentative and not cross-examination and assuming a state of facts that do not appear in the record.

Objection overruled. Defendant allowed an exception.

A. It seems to me there is a contradiction in the question—I can't understand it; it seems to me that involves a contradiction—it involves the idea that No. 2 is—

Q. Never mind that—can you answer my question the way it is or can you not?

A. I cannot; no, sir.

Q. Now, then, you have placed the upper side line of the Lotta in this last drawing quite a considerable distance above the falls, have you not—isn't that true? A. It falls that way, yes, sir.

Q. Take a ruler and measure how far you have placed it above the falls?

A. The way I have drawn the Lotta in, the last way, assuming what I did when I drew it, it throws the northeasterly side line of the Lotta about 35 feet above the falls.

Q. Now, then, if the testimony of Mr. Ebner is that the change in the creek bed is below the falls, then putting the map in the way you have is incompatible with the theory of his testimony, is it not?

A. I don't think so.

Q. You have not calculated the winding of the creek down below the falls if Mr. Ebner's testimony said it was below the falls? A. I have.

(Testimony of R. D. Stewart.)

Q. And you have placed the upper side line way up above it? [1516] A. Yes, sir.

Q. I will ask you this question again—if Mr. Ebner's testimony was that the widening of the creek or the throwing of it to one side took place below the falls and in the neighborhood of where Corner No. 2 of the Lotta should be as we contend—then isn't your drawing and the placing of the Lotta as you have last placed it incompatible with his testimony?

Mr. SHACKLEFORD.—I want to enquire of counsel if they contend that the corner No. 2 of the Lotta should be at the foot of the falls?

The WITNESS.—That is what I don't understand—that is the reason I can't answer your question.

Q. Do you know where we contend the corner of the Lotta is?

A. I understood the contention was that it was right at the base of the falls.

Q. The way you have mapped the claim in on this map as according to our contention, you have placed Corner No. 2 below the falls, have you not—you have placed the Lotta in there according to our contention with the corner below the falls?

A. It fell below the falls as I surveyed the stakes on the ground—it fell on exhibit No. 7 that way and I so show on your exhibit.

Q. If the widening of the creek as testified by Mr. Ebner was below the falls, you haven't placed the Lotta in there consistent with his testimony?

(Testimony of R. D. Stewart.)

A. Yes, as near as I can.

Q. I will ask you to indicate on Gold Creek anywhere between Corner No. 6 of the Lotta as we contend it is and as you have put it in on your exhibit No. 7 according to our contention [1517] and if the creek is thrown over towards Corner No. 2 25 or 30 feet, where would that upper side line then according to your contention be?

A. You mean if the creek had shifted at that point?

Q. Yes.

A. If it had shifted to the northwest 25 or 30 feet originally then it was over here—if it shifted 25 feet it was originally 25 feet to the southeast.

Q. You have platted the creek in here according to what you said the field-notes show?

A. No, I have platted the creek in here as it is on the ground now.

Q. As it is now on the ground?

A. As it is now on the ground.

Q. Then, if it has shifted 25 feet over here, according to your contention it would be 25 feet the other way?

A. Originally it would have been—it must have been there originally to have shifted 25 feet.

Q. The reason you place it here according to this last specification is because you place the Lotta as you have testified concerning with its upper side line just above the upper side line that you have placed in up here and that last upper side line is where you place the Lotta, to find the place on the

(Testimony of R. D. Stewart.)

creek that you thought it would fit in according to the field-notes?

A. That is marked void, this is the last one I put in here.

Q. Where is the upper side line of the Lotta according to your placing it in the right position on the creek *that say* was the only position it could be placed in according to [1518] the field-notes in the survey and the description in the survey—which one of these is it? A. I think it is the green one.

Q. The one with the green lines you mean?

A. That is the one I originally put in there and said it was the only position that could be platted for the Lotta, assuming that the creek is as it is now—the change takes place because we assume a new position in the creek.

Q. Now, then, you are placing this last Lotta on there assuming that the position of the Lotta as indicated by the green line is the correct position for it to be?

A. Not at all—if I understand your question.

Q. I don't know what relative position you have given it in placing it upon the map this last time—didn't you place it upon the map assuming that you had correctly located it by the green lines on there?

A. No, I placed it on the map assuming that the creek had changed.

Q. You have placed the upper side line of the Lotta over near your green line, of the upper side line?

A. I measured the distance there and said I

(Testimony of R. D. Stewart.)

thought it was something like 20 feet.

Q. You place it this last time assuming that your green line location was a proper one, don't you?

A. Was a proper one if you assume that the creek is as it is marked on the map.

Q. And place it in accordingly? A. Yes.

(By Mr. HELLENTHAL.)

Q. Your assumption is in putting in that new Lotta on the map [1519] you assumed that Mr. Ebner testified that the creek had changed 25 feet for a considerable distance up the creek?

A. That is the idea and below the falls, too.

Q. If the change in the creek bed had been merely a local change that would have extended for only a few feet one way or the other at the lower part of the falls, would such change have any effect upon the location of the Lotta as far as the green lines are concerned? A. It would not.

Judge WINN.—We move to strike out all the evidence of the witness because he was called upon to place the line on the map according to the testimony of Mr. Ebner and it plainly shows that he did not place it on there according to the testimony of Mr. Ebner—he has placed it on on another theory.

Motion denied. Plaintiff allowed an exception.
(By the COURT.)

Q. You remember the picture that Mr. Ebner took and marked on the snow where he thought the Corner No. 2 was? A. Yes.

Q. How far have you placed this last line you have

(Testimony of R. D. Stewart.)

drawn on the Lotta—how far up the creek have you drawn the northeast side line, whatever he marked that corner?

A. I don't know as I saw the way he marked it on the snow.

Q. You simply took the one tie of Mr. Ebner's location and then ran out these courses and distances as called for in the patent—that is what you attempted to? A. In this case.

Q. Yes. [1520]

A. What I did in this case was to try to place the creek in such a way as to conform to the ties given from Corner No. 2 and 5 in the patent, that is 40 and 1200 feet, respectively, from those two corners and make its position parallel to the course given in the patent, assuming the creek had changed.

Q. If Mr. Ebner testified that Corner No. 2 of the Lotta would fall underneath that snow bank and somewhere beneath the boulders, how far up the creek have you pushed that side line of the Lotta, this last drawing you have made?

A. About 35 feet.

(By Mr. SHACKLEFORD.)

Q. How far is it from the foot of the falls to the intersection of the upper side line of the Lotta with the creek as staked on the ground?

A. The point which is marked No. 7 as the base of the falls, is the projection in the base of the falls to which Mr. Ebner testified and which shows in this photograph at the point marked "B"—I located that point on my survey; further, measuring in the gen-

(Testimony of R. D. Stewart.)

eral direction down along the creek it is 150 feet from the base of the falls to where the creek would cross the side line of the Lotta as indicated by the stakes which are on the ground.

Q. (By the COURT.) At right angles to the side line of the Lotta?

A. At right angles to the side line of the Lotta—it would be about 115 feet at right angles.

(By Judge WINN.)

Q. You made that last measurement, commencing at the letter “B” on exhibit “U”? [1521]

A. I made that from the small dark spot underneath the point “B” at the base of the falls.

Q. But you didn’t make your measurement from what is marked on this, corner stake 2, S. 2, on this photograph?

A. I didn’t have that point anywhere located on my map.

Q. You didn’t make this last measurement commencing at that point? A. No, sir, I did not. [1522]

Deed of Mining Claim [Wm. M. Ebner to Ebner Gold Min. Co., Dated April 20, 1904.]

This indenture made this 20th day of April in the year of our Lord One thousand Nine Hundred and Four, Between William M. Ebner of the City of Juneau, District of Alaska, the party of the first part and the Ebner Gold Mining Company, party of the second part, WITNESSETH, That the said party of the first part for and in consideration of

the sum of One Dollar lawful money of the United States of America to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, remised, released and forever quit-claimed and by these presents does grant, bargain, sell, remise, release and forever quit-claim unto the said party of the second part and to its successors and assigns, the following described lode mining claims and mill-sites more particularly described as follows, to wit:

That certain lode mining claim containing 1500 linear feet on the Parish Number One Lode claim situates about two miles from Juneau up Gold Creek in Snow Slide Gulch, in the Juneau Recording District, Harris Mining District, District of Alaska, and described as follows, viz.:

Commencing at the Notice of Location, posted on a post in Snow Slide Gulch, about 750 feet in a Southerly direction from the Southwest corner of the Lotta lode claim and running 1000 linear feet in a southeasterly direction and 500 linear feet in a northwesterly direction, together with 300 feet in width of surface ground on each side of the center of the lode line: Side lines being described as follows, viz.: Commencing at the Northeast corner, marked by a post situated about 125 feet in a Southeasterly direction from the southwest corner of the said Lotta Lode claim, and on the southwest side line of the Royal Lode claim, thence along the southwest side line of [1523] the said Royal Lode claim its entire length, and continued in the same direction about 650 feet to a monument, thence in a southwesterly direction 600 feet to a monument, thence in a north-

westerly direction 1500 feet to a post, thence in a northeasterly direction 600 feet to a post, the point of beginning.

Also that certain lode mining claim located and containing 1500 linear feet on the Parish Number two lode claim situated about two miles from the Town of Juneau on Gold Creek in the Harris Mining District, District of Alaska, and described as follows, viz.: Commencing at the Notice of Location posted on a post in Gold Creek Canyon about 600 feet in a westerly direction from the southeast corner of the Lotta Lode claim and running in a southeasterly direction parallel to the said Lotta and Royal lode claims, and about 300 feet from the same to the end of lode claim Parish Number One being about 700 linear feet and from the location post in a northwesterly direction parallel with the southwest line of the said Lotta Lode Claim 800 linear feet together with 300 feet in width of surface ground on each side of the center of the lode line; Side lines being described as follows, namely, Commencing at the southeast corner marked by a post situated about 125 feet in a southeasterly direction from the southwest corner of the Lotta Lode claim, and on the southwest side of the Royal Lode claim, thence in a southwesterly direction 600 feet to a post, thence in a northwesterly direction parallel with the southwest side of said Lotta Lode claim 1500 feet to a post, thence in a northeasterly direction 600 feet to the southwest side line of the said Lotta Lode claim, thence southeasterly along the southwest side line of the said Lotta Lode claim to the southwest corner of said lode claim

and 125 feet beyond in the same direction to a post the point of beginning. [1524]

The notice of location of said lode mining claims are recorded on pages 156 and 157 respectively in Book 15 of Lodes of the records of the Juneau Recording District, District of Alaska.

Also that certain millsite containing five acres, more or less, of non-mineral land, known as the Lotta Millsite Situated just northwest of and immediately adjoining United States lots numbers 161 and 162 on Gold Creek in Harris Mining District, District of Alaska, and more particularly described in the location notice thereof recorded in Book VII of Placers on page 286 of the records of the Juneau Recording District, District of Alaska, to which notice reference is hereby made for a more particular and complete description.

Also that certain Millsite containing five acres, more or less, of nonmineral land known as the Keystone millsite site, situated just northwest of and immediately adjoining United States Lots numbers 161 and 162 on Gold Creek in Harris Mining District, District of Alaska and more particularly described in the location notice thereof recorded in Book VII of Placers on page 286 of the records of the Juneau Recording District, District of Alaska, to which notice reference is hereby made for a more particular and complete description notice of said millsite.

Together with all the dips, spurs and angles and also all the metals, ores, gold and silver bearing quartz rock and earth therein and also the rights, privileges and franchises thereto incident, append-

andant and appurtenant or therewith usually had and enjoyed; and also, all and singular the tenement, hereditaments and appurtenances thereunto belonging or in anywise appertaining and the rents, issued and profits thereof; and also all the estate, right, title, interest, property, possession claim and demand whatsoever as well in law as in equity [1525] of the said party of the first part, of, in or to the said premises, and every part and parcel thereof, with the appurtenances;

TO HAVE AND TO HOLD, all and singular, the said premises together with the appurtenances and privileges thereunto incident, unto the said party of the second part, its successors and assigns forever.

IN WITNESS WHEREOF, the said party of the first part hath hereunto set his hand and seal the day and year first above written.

WILLIAM M. EBNER.

Witnesses:

C. C. HEID,

T. R. LYONS.

The change made in the word Southeasterly *were* the word South is written with pen on page 2 and the interlineation in line 2 page 3 were both made prior to the signing and executing of this deed.

United States of America,
District of Alaska,—ss.

This is to certify that on this 20th day of April, A. D. 1904, before me, the undersigned, a Notary Public in and for the District of Alaska, duly commissioned and sworn personally came William M. Ebner to me known to be the individual described in

and who executed the within instrument and acknowledged to me that he signed and sealed the same as his free and voluntary act and deed for the uses and purposes therein mentioned.

Witness my hand and official seal the day and year in this certificate first above written.

[Seal]

T. R. LYONS,

Notary Public for Alaska.

Filed for record at 10:45 o'clock A. M. April 23, 1904.

H. H. FOLSOM,

Recorder. [1526]

United States of America,
District of Alaska,—ss.

This is to certify that the foregoing is a true, correct and complete copy of the original instrument as the same appears of record in the office of the Recorder for the Juneau Recording District, District of Alaska, in Book 20 of Deeds at page 10 of said records.

Witness my hand and official seal affixed at Juneau, Alaska, this 25th day of April, 1912.

[Seal of U. S. Commissioner.] G. C. WINN,
United States Commissioner, Ex-Officio Recorder
for the Juneau Recording Precinct. [1527]
District of Alaska,
Juneau,—ss.

The within instrument was filed for record at 3 o'clock P. M., Dec. 21, 1899, and duly recorded in book 15 Lodes, on page 157 of the records of said District.

NORMAN E. MALCOLM.

District Recorder.

Notice of Location of Quartz Claim.

Notice is hereby given that the undersigned having complied with the mining Act of Congress approved May 10th, 1872, and the amendments and supplementary laws thereto, and the local customs, rules and regulations, have located fifteen hundred (1500) linear feet on the Parrish No. 2 Lode Claim situated about two (2) miles from the Town of Juneau, on Gold Creek, in Juneau Recording District, the Harris Mining District and the District of Alaska and described as follows, viz.:

Commencing at the notice of location posted on a post in Gold Creek Canyon about six hundred (600) feet in a westerly direction from the southwest corner of the Lotta Lode Claim, and running in a southeasterly direction parallel to the said Lotta and the Royal Lode Claims and about three hundred (300) feet from the same, to the end of lode claim Parrish No. 1, being about seven hundred (700) linear feet, and from the location post, in a northwesterly direction parallel with the south-west line of the said Lotta Lode Claim Eight Hundred (800) linear feet, together with three hundred (300) feet in weidth of surface ground on each side of the center of the lode line for working purposes, side lines described as follows, viz.: Commencing at the south-east corner marked by a post situated about one hundred and twenty (125) feet in a southeasterly direction from the southwest corner from the Lotta Lode Claim and on the south-west side line of the Royal Lode Claim, thence in a southwesterly direction six hundred

(600) feet to a post, thence in a northwesterly direction parallel to the south-west side line of said Lotta Lode Claim fifteen hundred (1500) feet to a post, thence in a northeasterly direction six hundred (600) feet to the south-west side line of [1528] the said Lotta Lode Claim, thence southeasterly long the southwest side line of the said Lotta Lode Claim to the southwest corner of said lode claim and one hundred and twenty-five (125) feet beyond in the same direction to a post, the point of beginning.

Discovered and located this 24th day of October A. D. 1899.

WM. M. EBNER, Locator. [1529]

United States of America,
District of Alaska,—ss.

This is to certify that the foregoing is a true, correct and complete copy of the original instrument as the same appears of record in the office of the Recorder for the Juneau Recording District, District of Alaska, in Book 15 of Lodes at page 157 of said records.

Witness my hand and official seal affixed at Juneau, Alaska, this 25th day of April, 1912.

G. C. WINN,
United States Commissioner, Ex-officio Recorder for
the Juneau Recording Precinct. [1530]

Statement of Account—Parrish Lode.

1905.

1901.				1905.		
Jan. 31.	Development	.167	7.75	Jan. 5.	Development	.300 168.55
July 30.	W. M. Ebner..	.188	16.25	Feb. 5.	"	...303 200.
Sept. 30.	" " "	...193	25.00			
Dec. 31.	" " "	...199	79.75			
31.	Operating	...200	11.80			368.55
1903.						
Jan. 5.	Wm. M. Ebner..	223	28.00			
1905.						
Feb. 5.	B. M. B. B....	303	199.25			
	Mining303	.75			
Apr. 5.	B. M. B. B....	310	13.50			
	"310	10.			
Dec. 5.	Geo. Dull.....	347	25.00			
1905.						
Jany. 5.	B. M. B.	352	40.00			
1906.						
July 5.	W. M. Ebner..	393	1.50			
Oct. 22.	Development	. 16	368.55			
" "	Mining 16	1053.00			
			1880.10			
Oct. 22.	To Balance...		1511.55			
Nov. 5.	Pay-roll 18	17.00			
Dec. 5.	" "	24	10.50			

[1531]

[Contract and Agreement Between Alaska-Juneau Mining Co. and Ebner Gold Mining Co., Dated March 10, 1909.]

THIS INDENTURE, made this 10th day of March, in the year of our Lord One Thousand Nine Hundred and Nine, between the ALASKA JUNEAU GOLD MINING COMPANY, a corporation organized and existing under and by virtue of the laws of the State of West Virginia, and doing business in the District of Alaska, the party of the first part, and the EBNER GOLD MINING COMPANY, a corporation organ-

ized and existing under and by virtue of the laws of the District of Alaska, the party of the second part,

WITNESSETH

That, Whereas, by a certain Contract and Agreement made and entered into by and between the parties herein, of date 25th day of April, A. D. 1905, wherein and whereby the party of the first part herein agreed to convey all of that portion of the Colorado Lode Mining Claim in conflict with the Parish Lode Mining Claim (which conflict is hereinafter fully described) upon receiving United States patent to said Colorado Lode Mining Claim, to the party of the second part herein, in consideration of said party of the second part herein dismissing and withdrawing a certain adverse suit which it had filed against the application of the party of the first part herein for a patent to the Colorado Lode Mining Claim, and in which adverse, so filed as aforesaid, the said Ebner Gold Mining Company, the party of the second part herein, claimed all that portion or parcel of said Colorado Lode Mining Claim in conflict with the said Parish Lode Mining Claim, the description of which conflict is the property in this deed conveyed to the said Ebner Gold Mining Company;

And Whereas the party of the first part herein has now obtained a patent for said Colorado Lode Mining Claim, including within its exterior boundary lines the conflict herein mentioned [1532] with the said Parish Lode Mining Claim.

NOW THEREFORE for and in consideration of the premises and the sum of \$1.00 to the party of the second part, receipt whereof is hereby acknowl-

edged, the party of the first part hath granted, bargained, sold and conveyed, and by these presents doth grant, bargain, sell and convey unto the said party of the second part, its successors and assigns:

All the following described real estate situate in the District of Alaska, to wit:

Commencing at corner number 6 Colorado Lode, Survey No. 641, whence corner number 5 Royal Lode bears North $33^{\circ} 45'$ West, 567.64 feet distant; thence South $33^{\circ} 43'$ West, 522.36 feet along lines 6-1 Colorado Lode to corner number 1 Colorado Lode; thence South $56^{\circ} 15'$ West 86.30 feet along lines 1-2 Colorado Lode to corner number 2; thence South $41^{\circ} 15'$ East, 34.96 feet along lines 2-3 Colorado Lode to corner number 3; thence South 84° West, 585.64 feet along lines 3-4 Colorado Lode to point of intersection with Southwest side line of Parish No. 1 Lode; thence along Southwest side line of Parish No. 1 Lode North $33^{\circ} 45'$ West, 600 feet to point of intersection with northwest side line of Colorado Lodes; thence along northwest side line of Colorado Lode lines 5-6, North 84° East, 678 feet to corner No. 6 Colorado Lode and place of beginning, containing an area of eight and six-hundredths (8.06) acres.

All of said above described property being in the Harris Mining District, District of Alaska; together with all and singular the mines, minerals, lodes and veins (except as hereinafter reserved) within the lines of said above described conflict and their dips and spurs, and all improvements,

RESERVING, HOWEVER, to the said party of the first part a right to drive, occupy and use a tun-

nel through the ground so in conflict for the purpose of reaching and developing the mining properties belonging to said party of the first part.

ALSO RESERVING to the said party of the first part all those underground parts of veins underlying the surface of the tract hereby conveyed, the tops or apexes of which are outside of said conveyed premises, and within the boundaries of lode mining claims now owned or possessed by said party of the first part. [1533]

IN WITNESS WHEREOF the said party of the first part hath hereunto caused its corporate name and seal to be affixed the

10th day of March, 1909.

ALASKA JUNEAU GOLD MINING CO.

By F. N. BRADLEY,

President.

[Seal] Attest: JOSEPH H. MOOSER,
Secretary. [1534]

State of California.

City and County of San Francisco.—ss.

This is to certify that on this 10th day of March, 1909, before me, the undersigned, a Notary Public in and for said City and County duly commissioned and sworn, that F. N. Bradley President, and Joseph H. Mooser Secretary of the within named Corporation who are personally known to me to be such President and Secretary, respectively, of said Corporation, personally appeared before me this day, and acknowledged the within and foregoing Warranty Deed to be their free and voluntary act and deed, and the free and voluntary act and deed of said Corporation.

Witness my hand and official seal this 10th day of March, A. D. 1909.

[Seal]

JOHN R. TYRRELL,

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]:

District of Alaska,
Juneau,—ss.

The within instrument was filed for record at 3 o'clock P. M. March 20, 1909, and duly recorded in book 22 of Deeds on page 182 of the records of said District.

H. H. FOLSOM,

District Recorder. [1535]

[Preamble and Resolution of Alaska-Juneau Gold Mining Co.]

WHEREAS, by a certain Contract and Agreement made and entered into by and between the Alaska Juneau Gold Mining Company and the Ebner Gold Mining Company, dated the 25th day of April, A. D. 1905, wherein and whereby the former Company agreed to convey all that certain portion of the Colorado Lode Mining Claim in conflict with the Parish Lode Mining Claim upon receiving United States patent to said Colorado Lode Mining Claim, to the Ebner Gold Mining Company, as set forth in said Contract and Agreement, and

WHEREAS the Alaska Juneau Gold Mining Company has now obtained a patent for said Colorado Lode Mining Claim, including within its exterior boundary lines the conflict mentioned with the said Parish Lode Mining Claim, and

WHEREAS the Ebner Gold Mining Company has requested the Alaska Juneau Gold Mining Company to comply with the terms of said Contract and Agreement of April, 25, 1905,

NOW THEREFORE, be it

RESOLVED that the President and Secretary of this Company, the Alaska Juneau Gold Mining Company, be and they hereby are authorized, empowered and directed to execute, in the name of this Corporation and deliver to the said EBNER GOLD MINING COMPANY, the said Deed as read to this Board of Directors, conveying Eight and six-hundredths (8.06) acres comprised in said Colorado Lode Mining Claim, and as per the terms and conditions of the Contract and Agreement of April 25, 1905, aforesaid.

I, Joseph H. Mooser, Secretary of the Alaska Juneau Gold Mining Company, do hereby certify that the above is a true, [1536] correct and full copy of Preamble and Resolution duly and regularly passed and adopted at a Meeting of the Board of Directors of said Corporation, held on the 10th day of March, 1909.

WITNESS my hand and the Seal of the said Alaska Juneau Gold Mining Company, this 11th day of March, 1909.

[Seal]

JOSEPH H. MOOSER,
Secretary Alaska Juneau Gold Mining Company.

[Endorsed]: 182.

District of Alaska,
Juneau,—ss.

The within instrument was filed for record at 3 o'clock P. M. March 20, 1909, and duly recorded in

book 22 of Deeds on page 182 of the records of said District.

H. H. FOLSOM,

District Recorder. [1537]

[**Contract and Agreement—Alaska-Juneau G. M. Co. and Ebner G. M. Co., Dated April 25, 1905.**]

THIS CONTRACT and AGREEMENT made *an* entered into this 25th day of April, 1905, by and between the ALASKA JUNEAU GOLD MINING CO., party of the first part, and the EBNER GOLD MINING CO., party of the second part,

WITNESSETH:

THAT WHEREAS, the party of the first part has applied for a United States patent to that certain lode mining claim in the Harris Mining District, District of Alaska, at or near Snow Slide Gulch on Gold Creek about two miles from Juneau, known and designated as the Colorado Lode Claim; and whereas, said Colorado Lode Claim is in conflict with a certain lode claim known as the Parish Lode Claim, claimed by the said party of the second part. And the said party of the second part has filed its adverse claim and brought its adverse suit for the ground so in conflict, now therefore, in compromise and settlement of said litigation, it is hereby understood and agreed that the said party of the second part shall dismiss its said adverse suit and withdraw said adverse claim; that the party of the first part shall proceed with and prosecute to patent said patent proceedings, and when it shall have obtained a United States patent to the said Colorado Lode Claim, it shall make, execute and deliver to the party

of the second part a deed conveying to it all the ground in conflict between said claims, reserving, however, to the said party of the first part a right to drive, occupy and use a tunnel through the ground so in conflict, or any portion of the said Parish Lode Claim for the purpose of reaching and developing the mining properties [1538] belonging to the said party of the first part.

IN TESTIMONY WHEREOF, the parties hereto have hereunto affixed their corporate names in duplicate this the year and day first above written.

ALASKA-JUNEAU GOLD MINING CO.

By F. N. BRADLEY,

President.

By LOUIS H. MOOSER,

Asst. Secretary.

EBNER GOLD MINING CO.,

By WM. M. EBNER,

President.

By B. M. BEHRENDTS,

Secty.

[Endorsed]:

District of Alaska,
Juneau,—ss.

The within instrument was filed for record at 10:09 A. M. Nov. 20, 1905, and duly recorded in book 18 of Agreements on page 577 of the records of said District.

H. H. FOLSOM,

District Recorder. [1539]

[Proposed Findings (Further).]

The Court further finds that the annual assessment

work required by law has been done and performed upon the Parish No. 2 Lode Mining Claim for the years 1908, 1909 and 1910. [1540]

The Court further finds that the annual assessment work and labor has been done and performed upon the Parish No. 2 Lode Mining Claim, each and every year since its location in the year 1899. [1541]

*In the District Court for the District of Alaska,
Division No. One, at Juneau.*

No. 835-A.

EBNER GOLD MINING COMPANY, a Corpora-
tion,

Plaintiff,

vs.

ALASKA-JUNEAU GOLD MINING COMPANY,
a Corporation,

Defendant.

**[Proposed] Findings of Fact and Conclusions of
Law.**

This cause coming on for hearing on the pleadings herein and a jury having been expressly waived, and the Court having heard the testimony and evidence of both plaintiff and defendant and argument of counsel, after all evidence had been introduced and cause submitted, finds as follows:

I.

That the plaintiff is a corporation organized and existing under and by virtue of the laws of the United States provided for the District of Alaska and is authorized to do and has been engaged and doing a general mining business in the District of

Alaska and has dealt with the said defendant as such corporation for more than fifteen years last past.

II.

That the plaintiff is now and has been for several years last past seised in fee and possessed of, and entitled to the possession, of that certain patented lode mining claim situated in the Harris Mining District, District of Alaska, viz.: The Lotta Lode Mining Claim, U. S. Mineral Survey No. 87, more particularly described as follows, to wit:

Beginning at Cor. No. 1 Lotta Lode Claim patented at a post now on the ground at Northwest center end of claim; thence north $57^{\circ} 24'$ East 150 feet to Cor. No. 2; thence South $31^{\circ} 36'$ East 150 feet to Cor. No. 3, identical with Cor. No. 5 Takou Gold & Silver Lode Claim, Survey No. 88 patented and Corner No. 1 Royal Lode, Survey No. 238, patented; thence South $27^{\circ} 24'$ West 150 feet to Southeast center end of Lotta Lode; 300 feet to Cor. No. 5, identical with Cor. No. 5 Royal Lode, Survey No. 238, patented, whence East side of Doorway of old [1542] cabin bears North $5^{\circ} 7'$ East 96.2 feet distant; thence North $31^{\circ} 36'$ West 1500 feet to Cor. No. 6; thence North $57^{\circ} 24'$ East 150 feet to Northwest center end and place of beginning; magnetic variation of all courses from true meridian 32° East of North.

III.

That while plaintiff was so seized the defendant between the —— day of August, A. D. 1910, and the commencement of this action, which was on the ——

day of ———, 1910, and without right or title entered into possession of part of said Lode Mining Claim and constructed thereon a portion of a dam for the purpose of conveying water from Gold Creek running through said patented claim, all of which said entry upon said claim was unlawful, wrongful, and ousted and ejected this plaintiff from that portion of said Lotta Lode Claim and said defendant wrongfully withholds the possession thereof from the plaintiff and the plaintiff is the owner and entitled to the possession of that part of said Lotta Lode Claim upon which a portion of said dam is constructed.

And as CONCLUSIONS OF LAW, the Court concludes:

I.

That the plaintiff herein is entitled to the possession of all that portion of the said Lotta Lode Claim upon which said dam is constructed, and this plaintiff has been ousted and ejected therefrom and is entitled to a Writ of Restitution and Ejectment herein to oust said defendant therefrom.

Let judgment and decree be entered accordingly.

Done in open Court this 12th day of June, A. D. 1911.

Judge. [1543]

In the District Court for the District of Alaska, Division No. One, at Juneau.

No. 835-A.

EBNER GOLD MINING COMPANY,
Plaintiff,

vs.

ALASKA-JUNEAU GOLD MINING COMPANY, a Corporation,
Defendant.

[Proposed] Findings of Fact and Conclusions of Law.

The trial of this cause coming on for hearing on the — day of May, A. D. 1911, on the issues made by the Amended Complaint, the Amended and Supplemental Answer and the Reply to said Amended and Supplemental Answer, and a jury having by the respective parties been expressly waived, and the said plaintiff, Ebner Gold Mining Company, a corporation having introduced all of its testimony and evidence rested its case, and the defendant, Alaska-Juneau Gold Mining Company, a corporation, having introduced all of its testimony and evidence and rested its case, and the said plaintiff having introduced its rebuttal evidence and testimony, and the said defendant having introduced its sur-rebuttal evidence and testimony, and both parties finally rested, and argument of counsel representing the respective parties having been made, comes now the plaintiff, Ebner Gold Mining Company, a corporation, by its attorneys Winn & Burton, and submit to the Court the following findings of fact and conclusions of law

on behalf of said plaintiff, Ebner Gold Mining Company, a corporation, viz.:

1.

The Court finds that the plaintiff, Ebner Gold Mining Company, is a corporation, organized December 5th, 1895, and existing under and by virtue of the laws of the United States provided for the District of Alaska, and is authorized to do, and has been engaged in, and doing, a general mining business in said district for over fifteen years, and has been recognized by the defendant over said period of time as a corporation and dealt with by said defendant [1544] as such, and said plaintiff corporation is entitled to hold, deal in, and acquire title from the United States to mineral lands and has been qualified so to do at all the times mentioned in the Amended Complaint herein.

2.

That the defendant is a corporation duly organized to do, and doing, business in the District of Alaska.

3.

The Court further finds that the plaintiff is now, and has been for several years last past seized in fee, and possessed and entitled to the possession of that certain patented lode mining claim situated in Harris Mining District, District of Alaska, viz.: The Lotta Lode Mining Claim, U. S. Mineral Survey No. 87, more particularly described as follows, to wit:

Beginning at Cor. No. 1 of Lotta Lode Claim, patented, a post at the northwest center end of the claim as found upon the ground at the trial of this suit; thence north $57^{\circ} 24'$ East 150 feet

to Cor. No. 2; thence South $31^{\circ} 36'$ East 1500 feet to Cor. No. 3, identical with Cor. No. 5 Takou Gold & Silver Lode Claim, Survey No. 88, patented, and Cor. No. 1 Royal Lode Claim, Survey No. 238, patented; thence South $57^{\circ} 24'$ West 150 feet to the Southeast center end of Lotta Lode; 300 feet to Cor. No. 5, identical with Cor. No. 5 Royal Lode, Survey No. 238, patented; whence East side doorway of old cabin bears North $5^{\circ} 7'$ East 96.2 feet distant; thence North $31^{\circ} 36'$ West 1500 feet to Cor. No. 6; thence North $57^{\circ} 24'$ East 150 feet to Northwest center end and place of beginning. Magnetic variation of all courses from a true meridian 32° East of North.

4.

That the plaintiff is now, and has been for several years last past, seized, possessed and entitled to the possession and the owner by discovery, location, staking and marking of the boundaries and recording by its grantors and predecessors in interest, and by a full compliance with the laws of the United States, and the doing and performing of the annual assessment work each and every year, of the Parish No. 2 Lode Mining Claim, situate in the Harris Mining District, District of Alaska, and fully described in the location thereof of record in Book 15 of Lodes, page 137 of the Juneau Recording District, at Juneau, Alaska, described as follows:

Commencing at the notice of location posted on a post in Gold Creek Canon about 600 feet in a westerly direction from the Southwest corner

of the Lotta patented claim and running in a Southeasterly [1545] direction parallel to said Lotta and the Royal Lode Claim patented, and about 300 feet from the same to the end of Lode Claim Parish No. 1, being 700 linear feet and from the location post in a Northwesterly direction parallel with the Southwest line of the said Lotta Claim 800 feet, together with 300 feet in width of surface ground on each side of the center of the lode line. Side lines are described as follows, viz.: Commencing at the Southeast Corner marked by a post situated about 125 feet in a Southeasterly direction from the Southwest Corner of the Lotta Lode Claim and on the Southwest side line of the Royal Lode Claim; thence in a Southwesterly direction 600 feet to a post; thence in a Northwesterly direction parallel with the Southwest side line of said Lotta Lode Claim 1500 feet to a post; thence in a Northeasterly direction 600 feet to the Southwest side line of the said Lotta Lode Claim; thence Southwesterly along the Southwest side line of the said Lotta Lode Claim to the Southwest Corner of said Lode Claim, and 125 feet beyond in the same direction to a post, the point of beginning.

5.

That while plaintiff was so seized and possessed and entitled to the possession of the above-described Lotta Lode Claim patented and Parish No. 2 Lode Mining Claim, the defendant between the — day of August, 1910, and the — day of

———, 1910, the commencement of this action, and without right or title entered into possession of a part of the said Lotta Lode Claim patented and of the said Parish No. 2 Lode Claim hereinabove described, and constructed and built upon, across and over said Lotta Patented claim and said Parish No. 2 Lode Mining Claim, a dam, and a grade, and placed thereon a flume for the purpose of conveying the waters of Gold Creek over, upon and across the said Lotta Lode Claim patented and the said Parish No. 2 Lode Mining Claim, and ousted and ejected plaintiff therefrom, and now unlawfully and wrongfully withholds the possession thereof from the plaintiff.

6.

The Court further finds that at the time of the commencement of this action and for several years prior thereto the plaintiff was the owner and entitled to the possession of each and all of said mining claims and is now the owner and entitled to the possession of the same and each of the same as against the said defendant and all persons and corporations whomsoever, and said plaintiff is entitled to the possession of all and each of said mining claims and all of the surface ground thereof. [1546]

And from the foregoing Findings of Fact the Court makes the following

CONCLUSIONS OF LAW.

1.

That the said plaintiff herein is entitled to a Writ of Restitution, and a Writ of Ejectment herein, restoring said plaintiff to the possession of the said Lotta patented claim and the said Parish No. 2 Lode

Mining Claim, as are more particularly set out and described in the Amended Complaint herein and the Findings of Fact, and said Writ of Ejectment to eject said defendant, its officers, agents and employees from said premises, and each and every portion thereof.

2.

That the plaintiff is entitled to a Restraining Order herein forever restraining and enjoining said defendant, its officers, agents and employees and successors in interest from in anywise interfering with the possession and ownership of said plaintiff in and to said mining claims set out and described in the Findings of Fact and Conclusions of Law and Amended Complaint, and each and every portion thereof; and for its costs and disbursements herein.

Let a judgment and decree enter herein accordingly.

Dated and done this — day of —, A. D. 1911, in open court.

_____,
Judge.

[Endorsed]: Original. No. 835-A. In District Court for Alaska, Division No. 1, at Juneau. Ebner Gold Mining Company, Plaintiff, vs. Alaska-Juneau Gold Mining Co., Defendant. Proposed Findings of Fact and Conclusions of Law. Filed June 12, 1911. E. W. Pettit, Clerk. John R. Winn, Newark L. Burton, Attorneys for _____. Offices: Juneau, Alaska. Office No. _____. [1547]

[Proposed Findings (Further).]

The Court further finds that the annual assessment work and labor required by law has been done and

performed upon the Parish No. 2 Lode Mining Claim for the years 1907, 1908, 1909 and 1910 and within the time in each of said years required by law.

[Endorsed]: 835-A. In the District Court for the District of Alaska, Division No. 1. Ebner Gold Mg. Co. vs. Ala. Jun. Gold Mg. Co. Proposed Finding of Plff. Filed July 5, 1911. E. W. Pettit, Clerk. [1548]

[Order Denying Certain Findings.]

*In the District Court for the District of Alaska,
Division No. One, at Juneau.*

No. 835-A.

EBNER GOLD MINING COMPANY, a Corpora-
tion,

Plaintiff,

vs.

ALASKA-JUNEAU GOLD MINING COM-
PANY, a Corporation,

Defendant.

This matter coming on upon the plaintiff's request for Findings and the Court being fully advised, denies the Findings requested by the plaintiff other than those given in the Findings already filed.

Done in open court this 5th day of July, 1911.

EDWARD E. CUSHMAN,

Judge.

To the foregoing order plaintiff excepts, which exception is allowed.

EDWARD E. CUSHMAN,

Judge.

Entered in Court Journal No. 11, page 271, Fairbanks, Alaska.

[Endorsed]: 1659. 835-A. Order Denying Findings (Plff's.). Filed in the District Court, Territory of Alaska, 4th Div. Jul. 5, 1911. C. C. Page, Clerk. By H. C. Green, Deputy. Filed Aug. 21, 1911. E. W. Pettit, Clerk. By C. Z. Denny, Asst. [1549]

*In the District Court for the District of Alaska,
Division No. One, at Juneau.*

No. 835-A.

EBNER GOLD MINING COMPANY, a Corporation,

Plaintiff,

vs.

ALASKA-JUNEAU GOLD MINING COMPANY, a Corporation,

Defendant.

Objections to Proposed Findings of Fact and Conclusions of Law Offered and Tendered by Defendant.

I.

Comes now the above-named plaintiff by its attorneys Winn & Burton and objects to Finding of Fact No. 4 offered and tendered by the said defendant, for the reason that the same is against the law and evidence offered upon said trial and is not supported by the evidence, and is against and not within the scope of the oral decision rendered by the Court in said cause, in that the said oral decision so made

and rendered by the Court in reference to the said Parish No. 2 Lode Claim only holds, and the Court only stated, that said location was invalid on the ground that the land claimed within the exterior boundary lines of said Parish No. 2 Lode Mining Claim was not mineral ground and that there was no sufficient discovery of valuable mineral by the locator to warrant a location of said claim as a mineral claim; and further the Court did not state in its oral opinion that the plaintiff and its grantors had failed to do the assessment work on said Parish No. 2 Lode Claim.

II.

Said plaintiff also objects to finding Nos. 5, 6, 7 so offered and tendered by defendant, for the reason and upon the ground that there is no evidence to support the same and that the said oral decision rendered by the Court did not refer to the matters therein stated, and said findings are immaterial and [1550] redundant, and not within the scope of the matters being litigated; that the Court did not attempt to pass upon the respective rights of the plaintiff and defendant to any water of Gold Creek, nor did the Court attempt to pass upon the question as to whether or not there were any miners' rules, regulations or customs in force which had any bearing upon the question or questions or property that was being litigated, and that said findings are unnecessary, for the reason that said Parish No. 2 Lode Claim was only found to be invalid by reason of the facts set forth in the foregoing objection set out in preceding paragraph.

III.

The plaintiff specially objects to the tendered finding No. 8 of the defendant, wherein the defendant attempts to have the Court state that it made an inspection of the property in litigation, but only examined the discovery of the plaintiff, and made no attempt to examine the discovery made upon the Oregon Lode Claim located by Corbus, when, as a matter of fact, there is no evidence to support such finding whatsoever, and it will be presumed that the Court in visiting the property in litigation made an examination of all the objects upon the ground and place and places upon the ground that would throw any light whatever upon the matter being investigated, and matters in dispute.

IV.

Plaintiff also objects to the finding which defendant offered following finding No. 8 offered by said defendant which is unnumbered, and especially that part of said finding so offered that reads as follows: "The Court further finds that the Oregon Mining Claim referred to in the defendant's answer as located by J. P. Corbus and the Oregon Mining Claim as located by R. G. Datson were made for the purpose of convenience," for the reason that the Court in its oral decision found that said location so made by Corbus and Datson were made without any discovery, and especially [1551] without a discovery of mineral bearing rock in place, and that there was no proof that said ground was mineral ground. This plaintiff does not object to that part of said finding wherein the Court is requested by defendant to find "that the Canyon mining claim is based upon

a discovery within the boundaries of the Lotta patented mining claim within described and is void and without effect."

I.

And this plaintiff objects to Conclusions of Law numbered 2 and 4, for the reason that said Conclusions of Law are not supported by the findings of fact and conclusions of law and the same are not supported by any evidence or facts in the case.

II.

And the plaintiff also objects to each and all of the findings of fact which defendant offered to the Court and included in their Answer in this cause, and to each and all and every of said so offered and tendered findings upon the ground and for the same reasons urged in objections numbered I, II, III, and IV as set forth herein.

WINN & BURTON,

Attorneys for Plaintiff.

[Endorsed]: Original. No. 835-A. In the District Court for the District of Alaska, Division No. 1, at Juneau. Ebner Gold Mining Company, Plaintiff, vs. Alaska-Juneau Gold Mining Co., Defendant. Objections. Filed Jun. 15, 1911. E. W. Pettit, Clerk. By J. J. Clarke, Deputy. John R. Winn, Newark L. Burton, Attorneys for _____. Office: Juneau, Alaska. Office No. _____. [1552]

[Order Overruling Plaintiff's Objections to Proposed Findings, etc.]

*In the District Court for the District of Alaska,
Division No. One, at Juneau.*

No. 835-A.

EBNER GOLD MINING COMPANY, a Corpora-
tion,

Plaintiff,

vs.

ALASKA-JUNEAU GOLD MINING COM-
PANY, a Corporation,

Defendant.

This matter coming on for hearing upon the plaintiff's objections to the proposed Findings of Fact and Conclusions of Law offered and tendered by the defendant and the Court being fully advised, each and all of said objections are hereby overruled and denied except as shown by the Findings already filed herein.

Done in open court this 5th day of July, 1911.

EDWARD E. CUSHMAN,

Judge.

To the foregoing order plaintiff excepts, which exception is allowed.

EDWARD E. CUSHMAN,

Judge.

Entered in Court Journal No. 11, page 271, Fairbanks, Alaska.

[Endorsed]: 1659. 835-A. Order Overruling Plff's. Objections to Deft's Findings. Filed in the

1684 *Ebner Gold Mining Company vs.*

District Court, Territory of Alaska, 4th Div. Jul. 5,
1911. C. C. Page, Clerk. By H. C. Green, Deputy.
Filed Aug. 21, 1911. E. W. Pettit, Clerk. By C. Z.
Denny, Asst. [1553]

*In the District Court for the District of Alaska,
Division No. One, at Juneau.*

No. 835.

EBNER GOLD MINING COMPANY, a Corpora-
tion,

Plaintiff,

vs.

ALASKA-JUNEAU GOLD MINING COM-
PANY, a Corporation,

Defendant.

**Stipulation [Extending Time to Oct. 21, 1911, to File
Exceptions to Findings, etc.].**

IT IS HEREBY STIPULATED AND
AGREED by and between counsel representing the
above-named plaintiff and counsel representing the
above-named defendant, that the above-named plain-
tiff, Ebner Gold Mining Company, shall have until
the twenty-first day of October, A. D. 1911, within
which to prepare and file its written Exceptions to
the Findings, Judgment and Decree made, entered
and filed in said above-entitled cause.

Dated September 18th, A. D. 1911.

WINN & BURTON,

Attorneys for Plaintiff.

SHACKLEFORD & BAYLESS and

HELLENTHAL & HELLENTHAL,

Attorneys for Defendant.

[Endorsed]: Original. No. 835-A. In the District Court for the District of Alaska, Division No. 1, at Juneau. Ebner Gold Mining Company, Plaintiff, vs. Alaska Juneau Gold Mining Co., Defendant. Stipulation. Filed Sep. 19, 1911. E. W. Pettit, Clerk. By H. Malone, Deputy. John R. Winn, Newark L. Burton, Attorneys for _____. Office: Juneau, Alaska. Office No. _____. [1554]

*In the District Court for the District of Alaska,
Division No. One, at Juneau.*

No. 835-A.

EBNER GOLD MINING COMPANY, a Corporation,

Plaintiff,

vs.

ALASKA-JUNEAU GOLD MINING COMPANY, a Corporation,

Defendant.

**Stipulation [Extending Time to Jan. 1, 1912, to File
Additional Objections and Exceptions to Findings, etc.]**

IT IS HEREBY STIPULATED AND AGREED BY and between Counsels for the respective parties that the Alaska-Juneau Gold Mining Company and the Ebner Gold Mining Company shall have until January first, 1912, to file additional objections and exceptions to the Findings of the Court and also to the Orders of the Court in refusing

to find any or all of the findings requested by either parties.

Dated this 18th day of October, 1911.

HELLENTHAL & HELLENTHAL,

per S. E.,

Attorneys for Alaska-Juneau Gold Mining Company.

WINN & BURTON,

Attorneys for Ebner Gold Mining Company.

[Endorsed]: Original. No. 835-A. In the District Court for the District of Alaska, Division No. 1. Ebner Gold Mining Company, Plaintiff, vs. Alaska-Juneau Gold Mining Company, Defendant. Stipulation. Filed Oct. 18, 1911. E. W. Pettit, Clerk. By ———, Deputy. J. A. Hellenthal, Attorney for Defendants. Office: Juneau, Alaska. [1555]

*In the District Court for the District of Alaska,
Division No. One, at Juneau.*

No. 835-A.

EBNER GOLD MINING COMPANY, a Corporation,

Plaintiff,

vs.

ALASKA-JUNEAU GOLD MINING COMPANY, a Corporation,

Defendant.

Objections and Exceptions to Findings and Conclusions Made by the Court and Those Offered by Plaintiff and Refused or Modified, Also Exception to Portion of Decree.

Comes now the above-named plaintiff and in compliance with and under an Order of the above-entitled court heretofore made and within the time expressed within the said Order and Stipulation entered into by and between the attorneys representing the respective parties herein, and files the following written objections and exceptions to the Findings of Fact and Conclusions of Law of the Court and judgment or decree rendered herein and its exceptions to certain findings of fact and conclusions of law offered and tendered by the plaintiff within the time required by law and refused or modified by the Court in so far as any of said findings and conclusions made and judgment rendered by the Court or findings tendered by the said plaintiff pertain to or affect what is known as the Parish No. 2 Lode Claim as set out and described in the Complaint herein.

I.

The plaintiff objects and excepts to finding No. 5 made, rendered, signed and filed herein by the Court wherein the Court finds that said plaintiff has never been seized or possessed of the Parish No. 2 Lode Claim set out and described in paragraph III of plaintiff's second cause of action, for the reason that said finding and the whole thereof is against all of the evidence in [1556] said cause and there is no evidence to support said finding, and the uncontra-

dicted evidence in said cause shows that one William M. Ebner, the locator of said Parish No. 2 Lode Claim, did make a discovery of mineral bearing rock in place according to law at the time of locating and staking out said claim.

II.

This plaintiff objects and excepts to all of that part of finding No. 6 made, rendered, signed and filed by the Court wherein the Court finds "no assessment work required by law to the extent of \$100 each year has been performed or caused to be performed in labor and improvements of any kind or for the benefit and use of said Parish No. 2 Claim prior to the year of 1909, and that plaintiff and its grantors failed and neglected to sufficiently represent said claim during the years prior to 1909 after it attempted location in 1899"; for the reason that said finding, or said portion of said finding, is contrary to the law and contrary to the evidence and against the evidence, and in fact there is no evidence to support the same; that the uncontradicted evidence shows the annual assessment work during all of said times had been fully performed according to law.

III.

This plaintiff objects and excepts to finding No. 7 made, rendered, signed and filed by the Court herein, for the reason there is no evidence to support said finding; that it conclusively appears from the evidence in said cause that said Mulligan, mentioned in said finding, did not post any notice of location of water on August 1st, 1910; that said notice if posted at all was posted subsequent to said date, and if

posted at all was posted upon the patented Lotta Lode Mining Claim belonging to plaintiff; and that all of said finding is contrary to law and unsupported by the evidence and against the great weight of the evidence in said cause, and some portions of the same against the uncontradicted evidence in said cause. [1557]

IV.

Plaintiff objects and excepts to findings Nos. 8 and 9 made, rendered, signed and filed by the Court herein, except those portions of said findings wherein the Court finds that the defendant went upon the premises of the plaintiff, for the reason that all of the remainder of said findings and each of said findings are contrary to law, and against the evidence in said cause, and there is no evidence in said cause to support such portions of said findings.

V.

Plaintiff objects and excepts to conclusion of law No. 3 made, rendered, signed and filed by the Court herein, for the reason that said conclusion is not supported by the evidence in said cause; is contrary to law, and not supported by the findings made by the Court.

VI.

Plaintiff also excepts to conclusion of law No. 5 made, rendered, signed and filed by the Court herein, for the reason that said conclusion is contrary to law; contrary to the findings of the court, and contrary to the practise in the District Court for the District of Alaska, Division No. 1.

VII.

Plaintiff excepts to the refusal of the Court to make finding No. 1 as offered and tendered by plaintiff and to the modification thereof in leaving out the following clause, to wit: "And has been recognized by the said defendant over said period of time as a corporation and dealt with by defendant as such," for the reason that said finding was fully supported by the evidence in said cause.

VIII.

Plaintiff excepts to the refusal of the Court to make, render, sign and file herein finding No. 4 offered and tendered by plaintiff herein; for the reason that said finding is supported [1558] by the evidence in said cause, and in many respects by the uncontradicted evidence in said cause.

IX.

Plaintiff excepts to the refusal of the Court to make finding No. 5 as offered and tendered by the plaintiff herein, and particularly this plaintiff excepts to the action of the Court in omitting from said finding so offered, all that portion of said finding pertaining to the Parish No. 2 Lode Claim, and plaintiff excepts to the modification of said finding by the Court; and for the same reason and upon the same grounds, this plaintiff excepts to the refusal of the Court to make finding No. 6 as offered and tendered by plaintiff, and excepts to the modification thereof by the Court in leaving out all that portion thereof that refers to Parish No. 2 Lode Claim.

X.

Plaintiff excepts to the refusal of the Court to

make the following finding offered and tendered herein by plaintiff, and excepts to the Court's action in that respect in failing to make each and all of said findings, which said findings are as follows, to wit:

(a) "The Court further finds that the annual assessment work required by law has been done and performed upon the Parish No. 2 Lode Mining Claim for the years 1908, 1909 and 1910";

(b) "The Court further finds that the annual assessment work and labor has been done and performed upon the Parish No. 2 Lode Mining Claim, each and every year since its location in the year 1899";

(c) "The Court further finds that the annual assessment work and labor required by law has been done and performed upon the Parish No. 2 Lode Mining Claim for the years 1907, 1908, 1909 and 1910 and within the time in each of said years required by law";

For the reason that each and all of said above-quoted [1559] findings were supported by the greater weight of the evidence and in many respects by the uncontradicted evidence in the case.

XI.

The plaintiff excepts to the refusal of the Court to make conclusions of law numbered No. 1 and No. 2 offered and tendered by plaintiff, for the reason that the same are supported by the evidence in said cause and the greater weight of the evidence.

XII.

Plaintiff excepts to the following portions of the Decree made by the Court herein, viz.: "It is further

considered, ordered, adjudged and decreed that the plaintiff take nothing further by his (its) complaint herein and except as to the Lotta Lode Mining Claim this cause and action be dismissed without costs to either side"; for the reason that the Court erred in the dismissal of said action as to the Parish No. 2 Lode Claim and should have adjudged and decreed the plaintiff the owner and entitled to the possession thereof; and the Court further erred in not allowing plaintiff costs in said action, for the reason that the plaintiff was granted affirmative relief and was adjudged to be the owner and entitled to the possession of the Lotta Lode Claim and the defendant ejected therefrom; no exception, however, is taken to the said judgment or decree in so far as the same in anywise pertains to or affects the title and right of possession of the Lotta Lode Claim.

WINN & BURTON,

Attorneys for Plaintiff.

Due service of a copy of the within is admitted this 17th day of October, 1911.

HELLENTHAL & HELLENTHAL,

Attorney for Defendant.

[Endorsed]: Original. No. 835-A. In the District Court for the District of Alaska, Division No. 1, at Juneau. Ebner Gold Mining Co., Plaintiff, vs. Alaska-Juneau Gold Min. Co., Defendant. Exceptions to Findings, Conclusions and Part of Decree, etc. Filed Oct. 17, 1911. E. W. Pettit, Clerk. By H. Malone, Deputy. John R. Winn, Newark L. Burton, Attorneys for ————. Office: Juneau, Alaska, Office No. ———. [1560]

*In the District Court for the District of Alaska,
Division No. One, at Juneau.*

No. 835-A.

EBNER GOLD MINING COMPANY, a Corpora-
tion,

Plaintiff,

vs.

ALASKA-JUNEAU GOLD MINING COM-
PANY, a Corporation,

Defendant.

Motion for New Trial.

Comes now the above-named plaintiff and moves the Court to set aside the Findings of Fact and Conclusions of Law herein in so far as said Findings of Fact and Conclusions of Law in anywise affect the title of the Parish No. 2 Lode Claim set forth and described in the Amended Complaint herein and in so far as said Findings of Fact and Conclusions of Law affect the ownership of said Parish No. 2 Mining Claim by this plaintiff, or in so far as they in anywise affect the right, title and interest of this plaintiff in and to said mining claim; and to grant a new trial herein and set aside said Findings of Fact and Conclusions of Law and the ruling and decision of the Court in respect thereto, the said plaintiff feeling aggrieved thereby for the following causes materially affecting the substantial rights of said plaintiff, to wit:

1.

Irregularity of the proceedings of the Court and

abuse of discretion of the Court, by which plaintiff was prevented from having a fair trial.

2.

Newly discovered evidence material for the plaintiff herein which could not with reasonable diligence have been discovered and produced at the trial.

3.

Insufficiency of the evidence to justify the findings of fact [1561] and conclusions of law herein referred to and the decision of the Court, and said findings of fact and conclusions of law and decision of the Court respecting the said Parish No. 2 Lode Mining Claim, and each and all of them, are against law, and that there is no evidence to support said findings of fact, conclusions of law and decision of the Court, and said findings are contrary to the evidence and against all of the evidence in said cause.

4.

Error in law occurring at the trial and excepted to by the plaintiff.

WINN & BURTON,
Attorneys for Plaintiff.

Due service of a copy of the within motion for new trial is admitted this 6th day of July, 1911.

W. S. BAYLESS,
Of Attorneys for Defendants.

[Endorsed]: Original. No. 835-A. In the District Court for the District of Alaska, Division No. 1, at Juneau. Ebner Gold Mining Company, Plaintiff, vs. Alaska-Juneau Gold Mining Company, Defendant. Motion for New Trial. Filed Jul. 6, 1911. E. W. Pettit, Clerk. By J. J. Clarke, Deputy.

Alaska-Juneau Gold Mining Company. 1695

John R. Winn, Newark L. Burton, Attorneys for
———. Office: Juneau, Alaska. Office No.
———. [1562]

**[Order of July 5, 1911, Denying Motion to Set Aside
Findings and Conclusions, and for New Trial.]**

*In the District Court for the District of Alaska,
Division No. One, at Juneau.*

No. 835-A.

EBNER GOLD MINING COMPANY, a Corpora-
tion,

Plaintiff,

vs.

ALASKA-JUNEAU GOLD MINING COM-
PANY, a Corporation,

Defendant.

This matter coming on for hearing upon the plain-
tiff's motion to set aside the findings of fact and
conclusions of law affecting the title to the Parrish
#2 Lode Mining Claim described in the amended
complaint and to grant a new trial herein, and the
Court having listened to counsel and being fully ad-
vised in the premises—said motion is denied.

Done in open court this 5th day of July, 1911.

EDWARD E. CUSHMAN,

Judge.

To the foregoing order plaintiff excepts, which
exception is allowed.

EDWARD E. CUSHMAN,

Judge.

Entered in Court Journal No. 11, page 272, Fair-
banks, Alaska.

[Endorsed]: 1659. 835-A. Order Denying Motion to Set Aside Findings Affecting Title to Parrish #2. Filed in the District Court, Territory of Alaska, 4th Div. Jul. 5, 1911. C. C. Page, Clerk. By H. C. Green, Deputy. Filed Aug. 21, 1911. E. W. Pettit, Clerk. By C. Z. Denny, Asst. [1563]

*In the District Court for the District of Alaska,
Division No. One, at Juneau.*

No. 835-A.

EBNER GOLD MINING COMPANY, a Corporation,
Plaintiff,

vs.

ALASKA-JUNEAU GOLD MINING COMPANY, a Corporation,
Defendant.

Order of July 7, 1911, Denying Motion to Set Aside Findings, etc.]

This matter coming on for hearing upon the plaintiff's motion to set aside the Findings of Fact and Conclusions of Law affecting the title to the Parrish #2 Lode Mining Claim described in the amended complaint and to grant a new trial herein, and it appearing that the plaintiff has refiled on July 6, 1911, its motion to set aside the findings and grant a new trial, and the Court having heard counsel and being fully advised in the premises, said motion is denied.

Done in open court this 7th day of July, 1911.

EDWARD E. CUSHMAN,

Judge.

To the foregoing order plaintiff excepts, which exception is allowed.

EDWARD E. CUSHMAN,

Judge.

Entered in Court Journal No. 11, page 278, Fairbanks, Alaska.

[Endorsed]: 835-A. 1659. Order Denying Motion of Plaintiff to Set Aside Findings and Grant a New Trial. Filed in the District Court, Territory of Alaska, 4th Div. Jul. 7, 1911. C. C. Page, Clerk. By H. C. Green, Deputy. Filed Aug. 21, 1911. E. W. Pettit, Clerk. By C. Z. Denny, Asst. [1564]

[Plaintiff's Exhibit No. 3 in Case No. 733-B.]

*In the District Court for the District of Alaska,
Division No. 1, at Juneau.*

No. 803-A.

EBNER GOLD MINING COMPANY, a Corporation,

Plaintiff,

vs.

ALASKA-JUNEAU GOLD MINING COMPANY, a Corporation, ALASKA TREADWELL GOLD MINING COMPANY, a Corporation, L. D. MULLIGAN, O. M. HARRY and R. G. DATSON,

Defendants.

Answer [in Case No. 803-A.].

Come now the defendants and each of them, and for answer to the complaint of the plaintiff herein, admit, deny and allege as follows:

I.

The defendants deny each and every allegation in said complaint contained except in so far as the same are hereinafter expressly admitted.

II.

The defendants admit that the defendant, the Alaska Treadwell Gold Mining Company, and the defendant, the Alaska Juneau Gold Mining Company are corporations, doing business in the District of Alaska and aver that said corporation are authorized by their charters to hold mining property and conduct mining operations, in which business they are now engaged.

And the defendants, further answering and by way of affirmative defense, allege: [1565]

I.

That the defendant, the Alaska Juneau Gold Mining Company, is engaged in the business of opening up, developing, and operating mines situated at or near Silver Bow Basin, in the District of Alaska, and that said corporation is the owner of and in possession of a large group of mining claims, composed of thirty-one (31) patented and a considerable number of unpatented claims, situated in and near said Silver Bow Basin, and along Gold Creek, above the town of Juneau, in the District of Alaska. That said defendant has for many years past been operating its said mines and developing the same.

II.

That at the time of making the discovery thereon hereinafter referred to, the ground hereinafter described as being within the boundaries of the Oregon

lode mining claim was open, unoccupied, unexplored public land of the United States. That during the month of October, 1899, one J. P. Corbus, a citizen of the United States, made a discovery of rock in place bearing gold and other precious metals, within the exterior boundaries of the said Oregon claim as hereinafter described, and the said J. P. Corbus did thereupon locate the lode and vein within which said mineral was so discovered by him by marking the boundaries of the claim located with substantial monuments so that the same could be readily traced upon the ground, and did within a reasonable time thereafter and as soon as the necessary surveying could be done, post a notice on the ground, and record with the District Recorder at Juneau, the recording district within which said claim was located, his notice of location, which said notice was so recorded on the 1st day of November, 1899; that the claim so located was named and designated as the Oregon lode mining claim. That said Oregon lode claim so located and situated is situated at or near the head of the Last Chance Basin, Harris Mining District, District of Alaska, immediately below the ground described in plaintiff's complaint within [1566] the boundaries of the Lotta lode mining claim, and is more particularly described as follows:

“Commencing at this notice and monument, the said monument herein identical with the corner No. 3, South No. 142, Last Chance, thence N. 17.15 E. 1310 feet to corner No. 2, S. No. 258—1500 feet to post; Thence N. 84.00 E. 150 feet to post intersect west side line Lotta or (Sotta)

S. No. 87. Thence S. 33.45 e. 550 feet to post on West side line of Lotta S. No. 87. Thence S. 17.15 W. 970 feet to post on NORTH Side Line Colorado, Thence S. 84 W. 600 feet to Cor. No. 3, S. No. 142 to the place of beginning, containing in area of eighteen acres more or less.

II.

That at the time of making the discovery thereon hereinafter referred to, the ground hereinafter described as being within the boundaries of the Wyoming lode mining claim was open, unoccupied, unexplored public land of the United States. That during the month of October, 1899, one A. N. Corbus, a citizen of the United States, made a discovery of rock in place bearing gold and other precious metals, within the exterior boundaries of the said Wyoming claim as hereinafter described, and the said A. N. Corbus did thereupon locate the lode and vein within which said mineral was so discovered by him by marking the boundaries of the claim located with substantial monuments so that the same could be readily traced upon the ground, and did, within a reasonable time thereafter and as soon as the necessary surveying could be done, post a notice on the ground, and record with the District Recorder at Juneau, the recording district within which said claim was located, his notice of location, which said notice was so recorded on the 1st day of November, 1899; that the claim so located was named and designated as the Wyoming lode mining claim. That said Wyoming claim so located and situated is situated near the head of the Last Chance Basin between

Snow Slide Gulch and Gold Creek, and adjoins the said Oregon lode claim and also immediately below the said Lotta claim, in said Harris Mining District, District of Alaska, and [1567] is more particularly described as follows:

“Commencing at this notice and monument, the said monument being identical with corner No. 5 S. No. 87 Lotta Lode claim, and with corner No. 5 S. No. 238 Royal Lode Claim. Thence S. 33.45 E 300 feet to post, thence S. 17.15 W. 280 feet to post on North side line of Colorado; thence S. 84.00 W. 600 feet to post identical with post of Oregon, thence N. 17.15, E. 970 feet to post; Thence N. 84.00 E. 60 feet to post on west side line of Lotta U. S. S. No. 87. Thence S. 33.45 e. 340 feet to post at corner No. 5. S. No. 87 the place of beginning containing ten acres more or less.”

IV.

That said Oregon and Wyoming lode claims have by mesne conveyances been transferred to and are now the property of the Alaska Juneau Gold Mining Company, which said last-mentioned company is now the owner of and in possession of the same.

That the annual assessment work for each year since the year 1899 has been performed for both of said claims by the said Alaska Juneau Gold Mining Company.

V.

That the said Alaska Juneau Gold Mining Company has for many years last past been engaged in extracting the ore from its said mines and in develop-

ing the same, and has in connection with such work erected such mills and other appliances as were necessary to mill and extract the gold from the ore so mined, and has in connection with its mining operations erected a thirty stamp mill upon its said property and pressed the development work done on said mines with all convenient speed with a view of erecting other and larger mills and increasing its facilities for treating the ore extracted; that the development work done in connection with said mining operations has been carried so far that the erection of a two hundred stamp mill is now necessary to successfully carry on [1568] its said mining operations. With this end in view the said defendant corporation has laid out a plan which includes the erection and construction of a two hundred stamp mill on the shore of Gastineau Channel, immediately below the town of Juneau, and the building of a tramway from said mill along the proposed route, extending from said mill to a point on the Colorado lode mining claim, which said last-mentioned Colorado lode mining claim is owned and possessed by the said Alaska Juneau Gold Mining Company, and lies adjacent to and joins the Wyoming and Oregon lode mining claims above described, which said tramway will at its terminal connect with a tunnel to be driven from the point where such connections are made through various lode mining claims, the property of the said Alaska Juneau Gold Mining Company, to the point where the mining operations of said company are now being carried on. That there is flowing through, over and upon the above-described

Oregon lode mining claim a small creek carrying on an average, approximately, 25,000 or 30,000 miner's inches of water; that said creek enters the said Oregon lode mining claim across its northerly end line and flows thence southerly across said claim; that the waters of said creek so flowing across the said Oregon claim were, on or about the first day of August, 1910, unappropriated, unused and unclaimed by any person or persons whatsoever, and were flowing across said claim in their natural channel and thence on down through the Last Chance Basin and through Gold Creek Canyon into Gastineau Channel, an arm of the Pacific Ocean. That the Alaska Electric Light & Power Company have appropriated and are using a small portion of the waters of Gold Creek, diverting the same at a point approximately one-half mile below the point where the said Gold Creek passes out [1569] of the boundaries of the said Oregon lode mining claim; that there are no other appropriators or users of the waters of said Gold Creek at any place between the point where the said creek enters the said Oregon lode mining claim at its upper end and the mouth of said creek except the small portion diverted and used by the said Electric Light & Power Company as aforesaid; that all the remaining waters in the said creek on the said first day of August, 1910, unappropriated and open to appropriation for beneficial uses, and that on or about the said first day of August, while the said waters of said Gold Creek were thus unappropriated and unused, except in so far as they were appropriated and used by the said Alaska Electric Light &

Power Company, as aforesaid, one L. D. Mulligan, acting as the agent and employee of the defendant, the Alaska Juneau Gold Mining Company and for and on behalf of said company, located of the unappropriated waters of Gold Creek thus flowing therein as aforesaid, 20,000 miner's inches, to be diverted at a point on the said Oregon lode mining claim, about 30 feet below the lower side line of the Lotta lode mining claim, as the same is described in the plaintiff's complaint, and did then and there post a notice of his said location, which said notice of location is in words and figures as follows:

“KNOW ALL MEN BY THESE PRESENTS: That I, L. D. Mulligan, of Alaska, a citizen of the United States, and over the age of twenty-one years, have appropriated and claimed 20,000 miner's inches, of the water of Gold Creek, near Juneau, Alaska, to be used for mining, milling and other purposes.

Said water to be diverted from said creek at a point indicated by this notice, posted on a tree, and about one mile from the mouth of said Gold Creek.

Said water is to be diverted by ditch, pipe and flume.

(Signed) L. D. MULLIGAN.

Dated Aug. 1st, 1910.”

That said notice of location was signed by the said L. D. Mulligan in person, wherefore and whereupon, and on the 2d day of August, 1910, the said Mulligan made, executed and [1570] delivered to the said Alaska-Juneau Gold Mining Company his cer-

tain deed in writing, conveying to the said corporation all his right, title, and interest in the waters so appropriated, which said deed of conveyance was made and executed for the purpose of vesting in the said corporation the legal title standing in the name of the said Mulligan, who, although acting as agent of the said corporation, signed said notice of appropriation in his own name. That said notice of appropriation was thereafter, and on August 8, 1910, duly and regularly recorded in the office of the District Recorder of the Juneau Recording District, the same being the district wherein said right is located; that said notice of location was posted at or near the proposed point of diversion on the Oregon lode mining claim above described; that immediately after the posting of said notice, and upon the said 1st day of August, 1910, the said Alaska-Juneau Gold Mining Company commenced work looking toward the diversion and appropriation of the waters flowing in Gold Creek over and above any excess appropriated by the said Alaska Electric Light & Power Company to the extent of 20,000 miner's inches as claimed in said notice, and that a crew of men has been continuously at work in the construction of pipe, flume and ditch lines as well as the construction of a dam at the proposed point of diversion, all of which dam, pipe, flume and ditch lines are intended to and will be used for the purpose of so diverting the said waters of Gold Creek appropriated and located as aforesaid, and such work in connection with the diversion of said waters has been carried on by said company with as much speed as the conditions would

permit of and without cessation or delay, and is still being so carried on, and will be pressed forward until the waters have [1571] been diverted and applied in accordance with the original intention; that the waters so appropriated were appropriated for the purpose of generating power and for other beneficial uses in connection with the operation of the two hundred stamp mill to be built on the shore of Gastineau Channel as hereinbefore stated; that it is the intention and purpose of the said defendant, the Alaska-Juneau Gold Mining Company, to press the work of diverting the said waters and of conducting the same through pipes and flumes to the said proposed mill with as much speed as the weather and other conditions will admit of and without cessation or delay, and to erect said mill and have the same in readiness and to commence the construction of said mill as soon as the necessary material can be obtained and placed upon the ground, and to press said work to completion; and it is the intention of the said company to divert the waters of Gold Creek by means of said dam, flumes and pipe-lines as soon as the weather and other conditions will permit, and to complete the same in connection with the operation of said two hundred stamp mill, the same being the beneficial use so designed. That the use of all the said waters so appropriated to the extent of the said entire 20,000 inches will be necessary in the operation of the said mill. That the point at which construction work is being carried on in connection with the building of the dam in Gold Creek is situated on the property of the said defendant, the Alaska-Ju-

neau Gold Mining Company, at a point about 30 feet below the southerly side line of the Lotta claim as the same is described in the plaintiff's complaint, and that all the excavations, trails, aqueducts, flumes and other improvements made by the said defendant in connection with the said scheme for the diversion of said water and [1572] appropriation thereof as aforesaid have been made upon the said Oregon, Wyoming, and Colorado lode mining claims, below and south of the southerly side line of the Lotta claim as described in the plaintiff's complaint, which said Oregon, Wyoming and Colorado lode mining claims are owned and possessed by the said Alaska-Juneau Gold Mining Company as aforesaid, except in so far as work has been done in this connection along the proposed route of the tramway above referred to, the same being identical with the proposed route of the ditch and flume line by means of which the water so appropriated is to be conveyed to the place of intended use, the said company being possessed of and owning all that certain tract of land lying between the said Oregon lode mining claim and the point on which said mill is to be built, as aforesaid, along the route of the said proposed pipe and flume line as the same is delineated and laid out on the map hereto attached. That the location of the claims of the defendant, the Alaska-Juneau Gold Mining Company, as well as the properties lying adjacent thereto and in the vicinity thereof, as well as the streams and other physical conditions, also the proposed ditch and flume line, proposed tunnel line, proposed mill and other matters and things referred

to in this answer, are correctly delineated and laid out on the plat hereto attached, which is made a part of this answer in order to give a more detailed and accurate description of the things thereon delineated.

VI.

That at the time of the commencement of this action, and for a long time prior thereto, and ever since, the defendant, the Alaska-Juneau Gold Mining Company, has been and still is in the actual, exclusive, open, notorious, physical possession and occupancy of all and singular the said Oregon, Wyoming, [1573] and Colorado lode mining claims as well as the right of way of the proposed flume and tram line above described which possession has been actual and to the exclusion of every one else whatsoever.

VII.

That under the local rules and customs of the miners of Harris Mining District, the same being the district through which Gold Creek flows along its entire length, as well as under the customs of the miners throughout the entire District of Alaska, and under the decisions of the courts of said district, the right to the use of water flowing in the natural water-courses may be acquired by appropriation, diversion and application to a beneficial use, and which said right so acquired by appropriation is recognized and exists under and by virtue of the local rules and regulations as well as the local custom of the miners of said mining district and of the said District of Alaska and by the courts of the said District.

VIII.

That under the local rules and regulations of the miners of Harris Mining District, as well as by the custom of miners of the said Harris Mining District and the District of Alaska, which said custom has been universally followed and observed by the miners throughout said mining district for many years and is still so universally observed not only by the miners of said mining district but by the miners throughout the entire District of Alaska as well, the right to the use of water by appropriation is initiated by the posting of a notice containing the essentials contained within the notice of L. D. Mulligan hereinbefore set out, at a point at or near where the water is intended to be diverted, which said custom not only requires the posting of such notice aforesaid, but also [1574] requires that the same be recorded with the district recorder within thirty days after such posting, it having been the universal custom for many years with the miners of the Harris Mining District and of the District of Alaska to so record such notices.

IX.

That the work so done by the defendant company adds to and in no wise detracts from the value of the property on which said work is being done. That a court of equity is without jurisdiction in the premises for the reason that the plaintiff, if it has any cause of complaint, has a plain, adequate and speedy remedy at law.

WHEREFORE, the said defendants, and each of them, pray that the plaintiff's complaint be dismissed, and that they recover their costs and dis-

bursements in this behalf incurred, and be granted such other and further relief as they may under the facts proven be entitled to.

SHACKLEFORD & BAYLESS,
HELLENTHAL & HELLENTHAL,
Attorneys for the Defendants.

United States of America,
District of Alaska,—ss.

I, Robert A. Kinzie, being first duly sworn, on oath say: That I am the agent and Gen'l Superintendent of the Alaska-Juneau Gold Mining Company and the Alaska Treadwell Gold Mining Company, defendants in the above-entitled action; that I have read the foregoing answer and know the contents thereof and believe the same to be true; that I make this verification because none of the officers, directors or other agents of the said companies, or either of them, are within the District of Alaska.

ROBT. A. KINZIE. [1575]

Subscribed and sworn to before me this 30 day of August, A. D. 1910.

[Seal]

SIMON HELLENTHAL,
Notary Public for Alaska.

Due service of a copy of the within is admitted this 30 day of August, 1910.

WINN & BURTON,
Attorneys for Plaintiff.

[Endorsed]: 733-B. Plff. Ex. No. 3. R. E. R. Original No. 803-A. In the District Court for the District of Alaska, Division No. 1, at Juneau. Ebner Gold Mining Company, a Corporation, Plaintiff, vs.

Alaska-Juneau Gold Mining Company et al., Defendants. Answer. Filed Sep. 1, 1910. H. Shattuck, Clerk. By H. Malone, Deputy. Lewis P. Shackelford & Bayless and Hellenthal & Hellenthal, Attys. for Defts. Office: Juneau, Alaska. [1576]

[Plaintiff's Exhibit No. 4 in Case No. 733-B.]

*In the District Court for the District of Alaska,
Division Number One.*

No. 802-A.

EBNER GOLD MINING COMPANY, a Corporation,
Plaintiff,

Plaintiff,

vs.

ALASKA-JUNEAU GOLD MINING COMPANY,
a Corporation, ALASKA TREADWELL
GOLD MINING COMPANY, a Corporation,
L. D. MULLIGAN, O. M. HARRY, and R. G.
DATSON,

Defendants.

Oral Opinion [in Case No. 733-B.].

Mr. N. L. BURTON, for Plaintiff.

Messrs. J. and S. HELLENTHAL and W. S.
BAYLESS, for Defendants.

There isn't any question but what a court of equity will always lend its assistance towards the preservation of property during the trial of an action where the property, or the title of the property, is in controversy, that is: if in a suit in equity, or in an action of law, injunctive relief is asked pending the trial of the action to prevent the destruction of the property, or to prevent the extraction of its

values, there isn't any doubt but what a court of equity should, and will, issue a restraining order to prevent a diminution of the value of the property pending the litigation.

What are the facts in this case? Plaintiff claims certain water rights on Gold Creek, also claims certain mining claims, patented and unpatented. He claims that the defendants have gone upon one of the patented claims and began to divert the water of Gold Creek. There is no evidence, not even an insinuation, that there is any of the water being sought to be diverted over which the plaintiff has any prior [1577] right, or to the use of which the plaintiff has any prior right.

There isn't any question but what water may be diverted for mining purposes. There isn't any question under the late ruling of the Appellate Court but what the riparian owner will not be heard to object to the diversion of water, unless he himself is putting the water to some beneficial use, and he then must show that the water that is being taken is diminishing the water that he had prior to that time been actually using. In other words, the law of appropriation of water rights obtains in this jurisdiction.

Now, what is the situation with reference to trespass or the alleged trespass? It is true the plaintiff claims and offers evidence to the effect that the attempted diversion is on his patented claim and, my own judgment is that, if that were uncontradicted, the Court should restrain the trespass, but is that the case here? Counsel says with a good deal of

energy that the defendants merely literally denied the ownership of the plaintiff.

Now, let's see what the proof is. The record shows that it is not on the Lotta claim. The records may be wrong, but surely no court of equity will so hold in a preliminary hearing and put a man who is out of possession in possession and dispossess the one in possession. These stakes on the Lotta claim may be the original boundary corner of that claim and, if that is true, the attempted diversion is on the Lotta claim, but why should the Court assume that these monuments are more apt to be correctly located than the monuments of the Idaho although they may have been there for many years. It is very easy for a man in going over these claims to see a stake to-day and see it again in three years from now and think it is in the same place. But be that as it may, there is a method by which it can be determined positively whether or not this diversion is on patented ground or otherwise. That hasn't been done by either party. [1578]

Counsel has asked me if I have any doubt as to where the title lies. I certainly have very substantial doubt as to where the title is, and I think that anybody could not have heard the testimony but what he would think the same way and would have a substantial doubt as to whether the attempted diversion, or the alleged trespass, is within the boundaries of a patented claim.

Now, as to the unpatented claim, as a matter of fact there has been no proof of title of any claim, or any mining claim offered. There may have been a

sort of tacit admission. The only way to prove a mining claim is to follow the law and show that its boundaries have been all marked, that they can be readily traced, that its corners have been marked and a discovery made. It is true there are affidavits here that the assessment work has been done and certain monuments located. There isn't a syllable of evidence as to whether any of these claims were legally located mining claims, and for a court of equity on evidence in the form of ex parte affidavits, without seeing these claims, to say that one claim is a valid claim under such testimony and that the other is a void claim, and grant a restraining order against a trespass where there has been no proof that the injury is irremedial or could not be compensated in damages, or that the damages would be of any particular consequence, is going farther than any court should go in a hearing for a preliminary restraining order.

So, it seems to me in a case of this kind where there is any substantial doubt as to the title of the property, and where there is no doubt the defendants are taking infinitely more chance—they are doing this at their peril,—they must believe they have title,—as I say, they are the ones that are taking the chance, and when a Court can see no reason why there would be any resulting irreparable damages, I think that a Court [1579] ought not to hesitate in refusing an injunction.

Courts should not only follow the law, but they should take a business view of the testimony and a business view of the transactions of men in interpret-

ing their rights, and in interpreting their motives and intentions and, as I say, it seems to me that the defendants are assuming more peril in constructing a work of this kind on disputed ground than the plaintiffs are, if they don't succeed in showing their title at the final hearing.

So far as any water rights the plaintiff may have upon Gold Creek, there is no evidence that this diversion will in any way conflict with those rights; in fact, there couldn't be any evidence of that sort, because the man who is down the stream is the man that must be heard to cry for the water and, when he does so, the Court will then determine what were the rights of the plaintiff in this court and the total amount of water he was entitled to at the date of the inception of plaintiff's or defendants' appropriation.

The restraining order will be refused.

To which opinion plaintiff excepted and an exception is allowed.

Done at Juneau, Alaska, September 2, 1910.

[Endorsed]: 733-B. Plffs. Ex. No. 4. R. E. R. Form No. 680. In the District Court of the United States for the Div. No. 1 of Alaska, Ebner Gold Mining Co., a Corporation, vs. Alaska-Juneau Gold Mining Co., a Corporation et al. Oral Opinion. Filed Sep. 6, 1910. H. Shattuck, Clerk. By H. Malone, Deputy. [1580]

*In the District Court for the District of Alaska,
Division No. 1, at Juneau.*

United States of America,
District of Alaska,
Division No. 1,—ss.

**Certificate [of Clerk U. S. District Court to Certain
Papers].**

I, E. W. Pettit, Clerk of the District Court for the District of Alaska, Division No. 1, hereby certify that the foregoing and hereto attached forty pages of typewritten matter, numbered from 1 to 40, both inclusive, constitute a full, true, and complete copy, and the whole thereof, of:

Proposed Findings of Fact and Conclusions of Law, filed June 12, 1911, pages 1 to 7, inclusive.

Proposed Finding of Plaintiff, filed July 5, 1911, page 8.

Order Denying Findings (Plff's.), filed July 5, 1911, in 4th Division, and Aug. 21, 1911, in First Division, page 9.

Objections, filed June 15, 1911, pages 10 to 12, both inclusive.

Order Overruling Plff's. Objections to Deft's Proposed Findings, filed July 5, 1911, in 4th Division, and Aug. 21, 1911, in First Division, page 13.

Stipulation, filed Sep. 19, 1911, page 14.

Stipulation, filed Oct. 18, 1911, page 15.

Exceptions to Findings, Conclusions and Part of Decree, etc., filed Oct. 17, 1911, pages 16 to 20, both inclusive.

Motion for New Trial, filed June 13, 1911, pages 21 and 22.

Order Denying Motion to Set Aside Findings Affecting Title to Parrish #2, filed July 5, 1911, in 4th Division, and Aug. 21, 1911, in 1st Division, page 23.

Order Denying Motion of Plaintiff to Set Aside Findings and Grant a New Trial, filed July 7, 1911, in 4th Division, and Aug. 21, 1911, in 1st Division, page 24.

Defendant's Answer, filed Sept. 1, 1910, pages 25 to 36, both inclusive.

Oral Opinion, filed Sept. 6, 1910, pages 37 to 40, both inclusive.

IN WITNESS WHEREOF I have hereunto set my hand and the seal of the above-entitled court this 11th day of May, 1912.

[Court Seal]

E. W. PETTIT,
Clerk.

By J. J. Clarke,
Deputy. [1581]



CH₇ NINE.

MAP
OF THE
HARRIS
MINING DISTRICT
ALASKA
SCALE 600' = 1"
< Reduced to 1200' = 1" N.C.N.



GASTINEAU CHANNEL
AND PART OF
STEPHENS PASSAGE

S.E. ALASKA

Scale 4000

SOUNDINGS IN FATHOMS
AT MEAN LOWER LOW WATER

Hydrography between 1888 and 1912
Topography
Correction from U. S. Geological Survey 1913

64
11

B X
30 Stamp Mill

ALASKA JUNEAU
G M Co

EBNER G.M Co

Dam

Tunnel

Creek

Proposed Tunnel and Dam

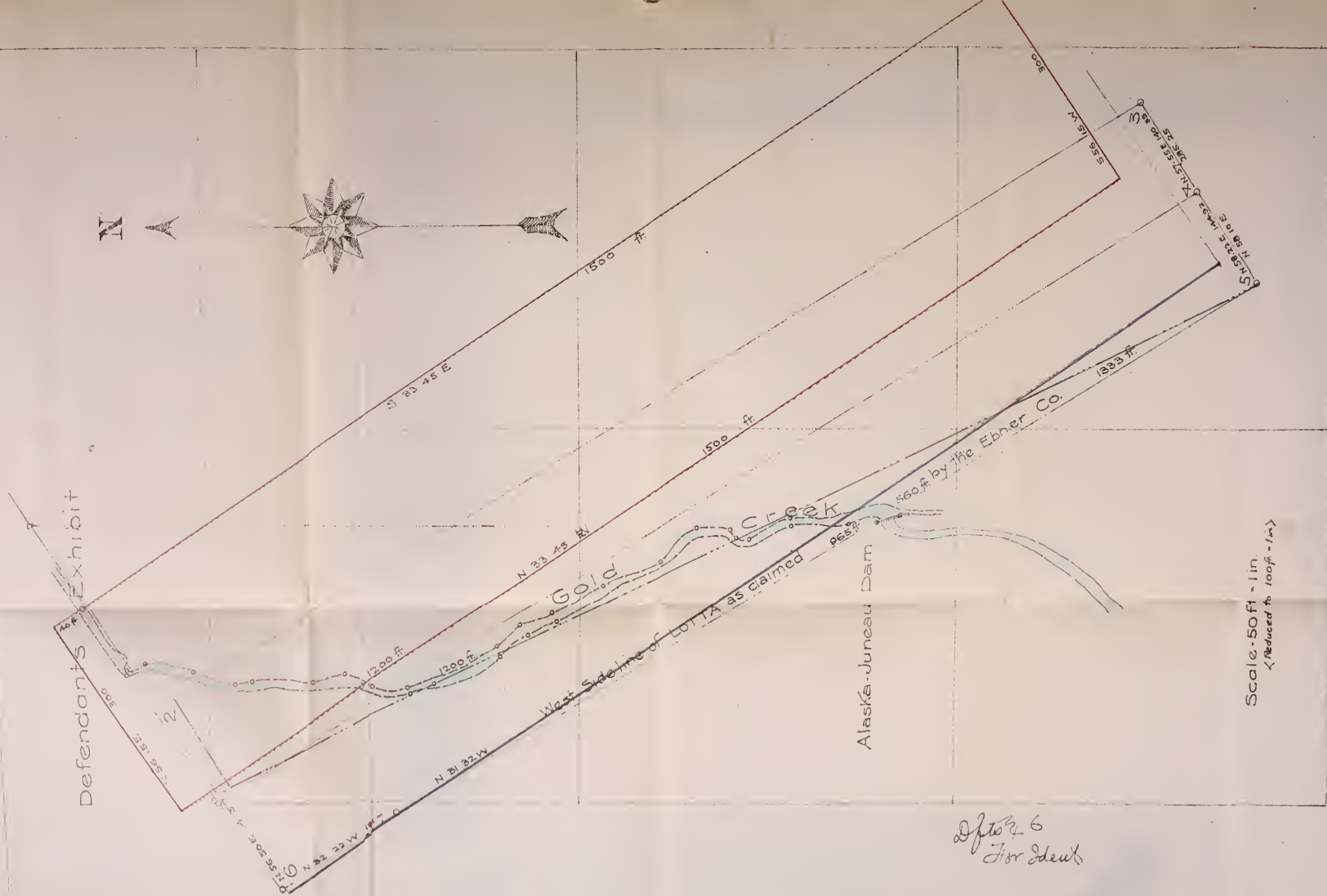
Proposed 300 Stamp Mill

Gastineau

Chloride

1915-1916

Revised to show feet in the 1915-16



Dft 6
For Idew

DEFENDANT'S EXHIBIT #7
For Ident

FORREST

CANYON

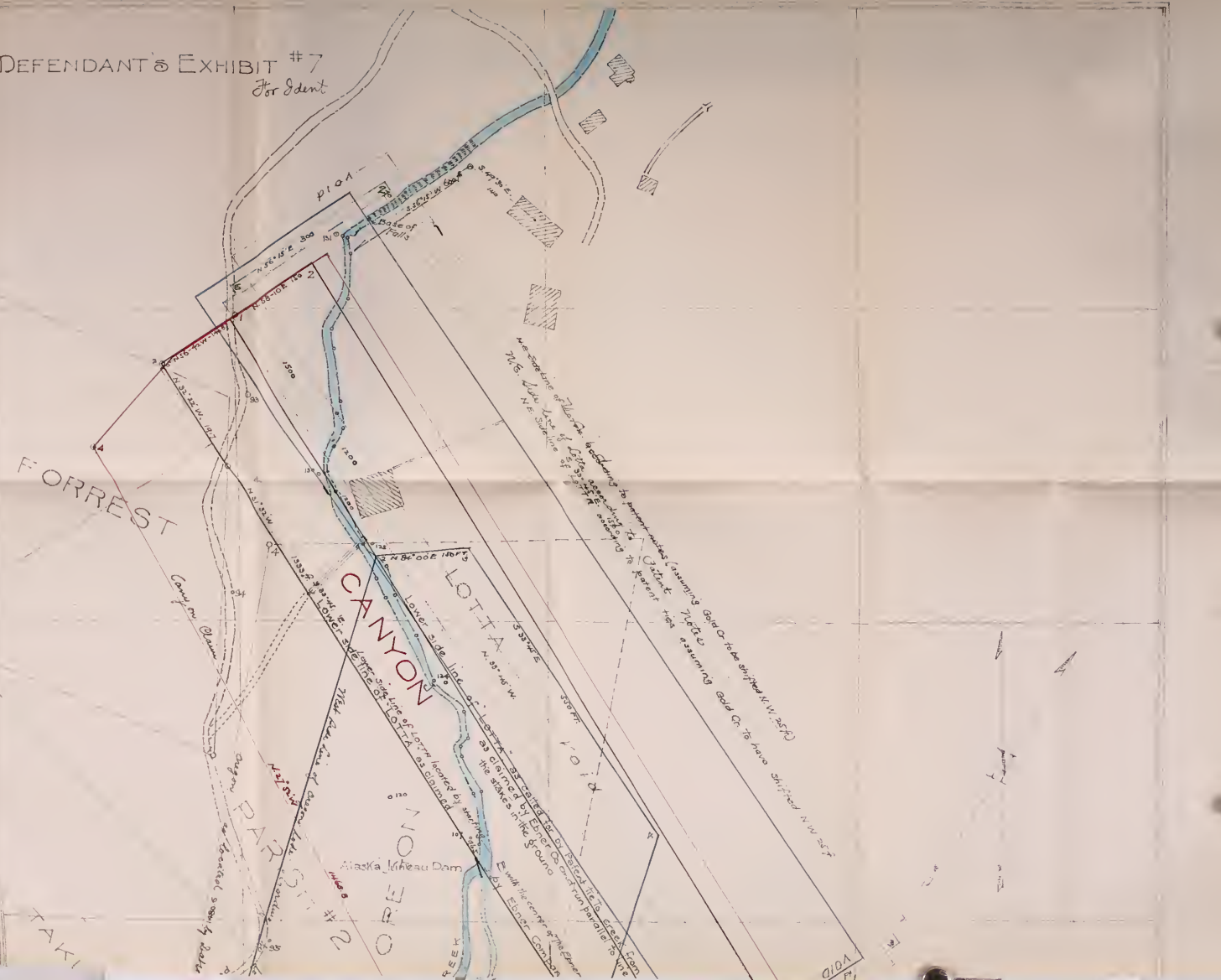
LOTTA

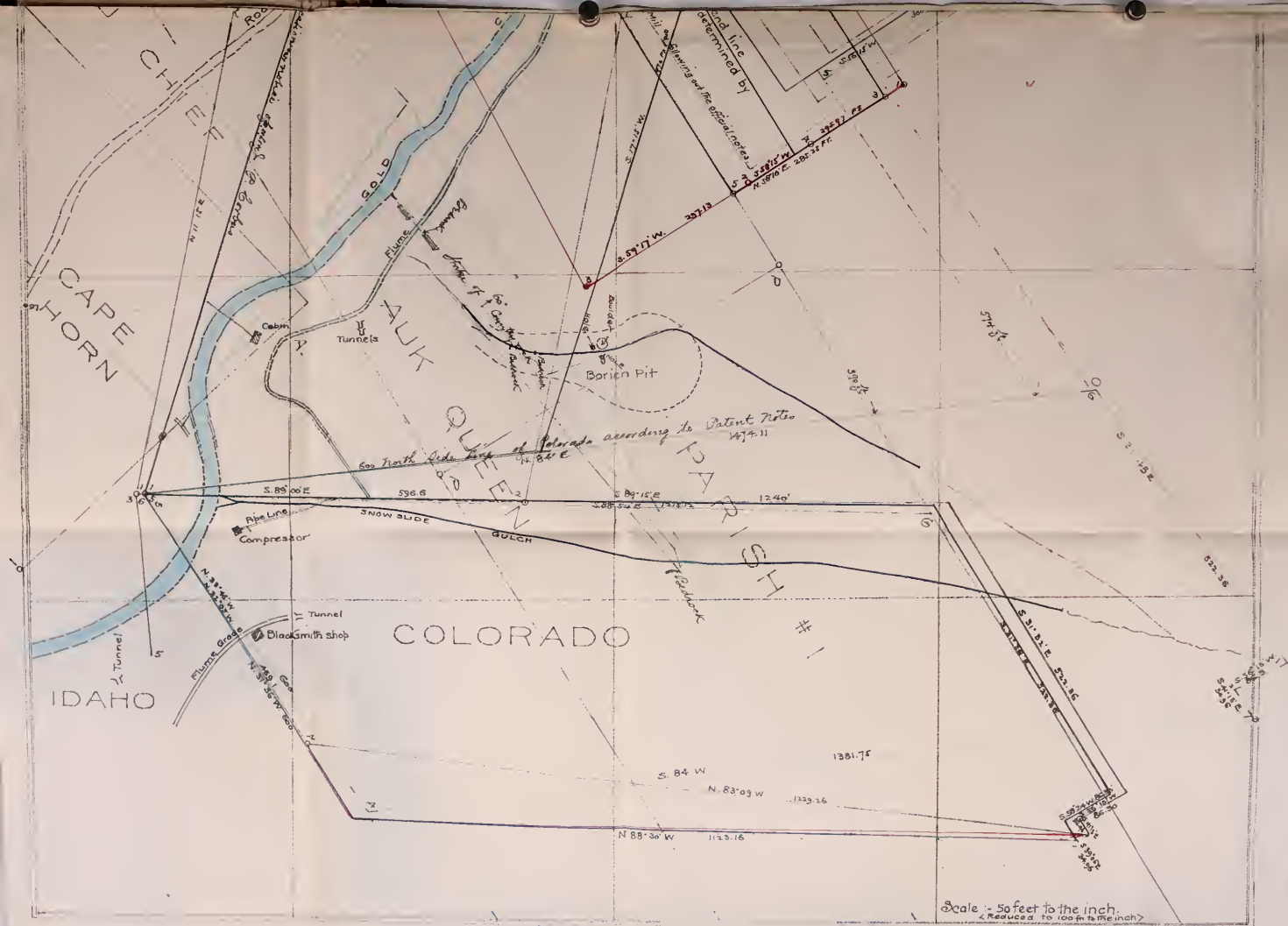
OREGON

Alaska, Kheau Dam

PAULSON

TAKI







U.S. Survivor Generals of the
Bureau of the
Vol. 23 19.

U.S. Surveyor-General
for Oregon

Claims Located..... October 31..... 1899. MS#
 Recorded .. November 1..... 1899.....
 Mineral Survey N^o. 641.....
 Application for Survey..... August 23, 1904
 Lot N^o.....
 Juneau..... Land District

PLAT

Alaska Juneau Gold Mining Co.
KNOWN AS THE

Colorado Lode Claim
 Idaho Placer Claim
 IN. Harris MINING DISTRICT,
 District of COUNTY, Alaska.
 Containing an Area of ^{Placer 3.87} Lode 1.867 Total 21679 Acres.
 Scale of 200 Feet to the inch.
 Variation 30° 00' E.

SURVEYED September 3-5, 1904 BY
Lloyd G. Hall U S Mineral Surveyor

The Original Field Notes of the Survey of the Mining Claim of
Alaska Juneau Gold Mining Company....

Colorado Lode Claim, and Idaho Placer Claim.

from which this plat has been made under my direction, have been examined and approved and are on file in this office; and I hereby certify that they furnish such an accurate description of said Mining Claim as will, if incorporated into a patent serve fully to identify the premises and that such reference is made therein to natural objects or permanent monuments as will perpetuate and fix the locus thereof

'further certifies that the benefit of each location is
has been expended for improvements made upon, said Mining
Claim by Claimant..... or its grantors, and that
said improvements consist of a tunnel 6x7x30 ft long Value
\$300.00 and a tunnel 6x7x50 ft long Value
\$300.00.....
Total Value.....\$1350.00

that the location of said improvements is correctly shown upon this plat and that no portion of said labor or improvements has been included in the estimate of expenditures upon any other claim.

And I further certify that this is a correct plot of said Mining Claim made in conformity with said original field notes of the survey thereof and the same is hereby approved

US Surveyor General's Office } (Signed) Wm. L. Dist. 10.
Sitka, Alaska. } US Surveyor General for
December 21, 1904. } Sitka, Alaska.

DESCRIPTION OF THE TOPOGRAPHIC MAP OF THE UNITED STATES

The United States Geological Survey is making a topographic map of the United States. This map has been in progress since 1882, and about one-fourth of the area of the country, excluding swampy portions, has been mapped. The mapped areas are widely scattered, nearly every State being represented, as shown on the progress map accompanying each annual report of the Director.

The first map is being published in atlas sheets of uniform size which are bounded by parallels of latitude and longitude. The four-corner division of the country, corresponding to an atlas sheet is called a quadrangle. The sheets are of approximately the same size. The paper dimensions are 20 by 16 1/2 inches. The map occupies about 17 1/2 inches of the sheet. The width is 16 inches of width, the latter being divided into 16 inches of width, the latter being divided into 16 inches of width. Three scales, however, are employed. The largest scale is 1:62,500, or very nearly one inch to one mile; i. e., one linear mile on the ground is represented by one linear inch on the map. This scale is used for the thickly settled or the most important parts of the country. The next smaller part of the country, an intermediate scale is 1:125,000, or about two miles to one inch, is used. A third and still smaller scale of 1:250,000, or about four miles to one inch, has been used in the desert regions of the far West. A few special maps, on larger scales, are made of some of the more interesting districts. The sheets on the larger scale cover 15 of latitude by 15 of longitude. The smaller scale sheets cover 30 of latitude by 30 of longitude and those on the smallest scale 1 of latitude by 1 of longitude.

The features shown on the map may, for convenience, be classed in three groups: (1) *water*, including seas, lakes, ponds, rivers and other bodies of water, canals, swamps, etc.; (2) *relief*, including mountains, hills, valleys, cliffs, etc.; (3) *culture*, i. e., works of man, such as towns, cities, roads, railroads, bridges, etc.

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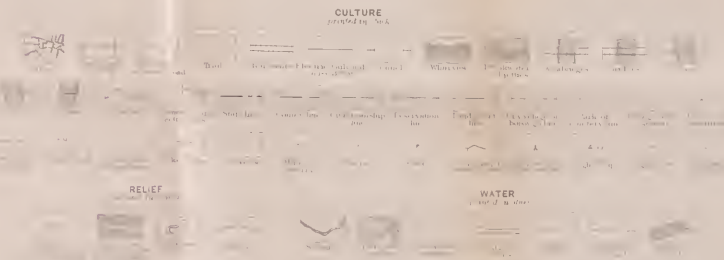
THE DIRECTOR.

United States Geological Survey

Washington, D. C.

September, 1903.

CONVENTIONAL SIGNS



**[Notice of Alaska-Juneau Gold Mining Co., of
Posting of Additional Amended Notice of
Appropriation of Water, etc.]**

District of Alaska,
Juneau,—ss.

The within instrument was filed for record at 4:45 o'clock P. M. May 8, 1911, and duly recorded in Book 10 of Placers at page 195 of the records of said District.

G. C. WINN,
District Recorder.

NOTICE IS HEREBY GIVEN, that, whereas, the ALASKA-JUNEAU GOLD MINING COMPANY did, by its agent, L. D. Mulligan, posting a notice claiming and appropriating 20,000 inches of water from the waters flowing in Gold Creek, which notice is in words and figures as follows:

“KNOW ALL MEN BY THESE PRESENTS: That I, L. D. Mulligan, of Alaska, a citizen of the United States and over the age of twenty-one years, have appropriated and claimed 20,000 miners inches, of the water of Gold Creek, near Juneau, Alaska, to be used for mining, milling and other purposes.

Said water to be diverted from said creek at a point indicated in this notice, posted on a tree, and about one mile from the mouth of said Gold Creek.

Said water is to be diverted by ditch, pipe and flume.

L. D. MULLIGAN.

Dated Aug. 1st, 1910.”

And, whereas, the said L. D. Mulligan acted as the agent of the undersigned in this connection, who is now the owner and holder of said right so located by said Mulligan by virtue of such agency and by virtue of conveyances from said Mulligan:

Now, therefore, the undersigned, not waiving any of its rights or abandoning any of the rights belonging to it under and by virtue of said above described notice and the work of diverting the water of Gold Creek appropriated by reason thereof, and done pursuant thereto, but for the purpose of giving a more accurate and detailed description of the beneficial uses to which said water is to be put and the place and places where the same is to be used when diverted and applied under the aforesaid notice and of the means whereby the same is to be conveyed to such place of intended use, hereby posts and records this additional and amended notice of appropriation of water, and gives notice to all persons whatsoever that it claims and appropriates under and by virtue of such original notice as well as this amended notice 20,000 miner's inches of the waters of Gold Creek measured under a four-inch pressure for mining, milling, power and other beneficial uses, to be diverted from said creek at a point at or near the place where this notice is posted, the same being posted on the banks of Gold [1589] Creek about one mile and one-eighth ($\frac{1}{8}$) above the town of Juneau about 500 feet below the Ebner mill and about 1250 feet above the Jualpa Dam and immediately at the point where the dam of the Alaska-Juneau Gold Mining Company has been constructed and where the water is diverted under the above mentioned loca-

tion notice, signed by L. D. Mulligan. The water so appropriated and claimed under said notice of L. D. Mulligan and hereunder is to be diverted from Gold Creek at that point, and conveyed by means of pipes, flumes, ditches and other means of conveyance, along a proposed route running above the southerly side of the Last Chance Basin and thence around Swede Hill to a point at or near Jorgenson sawmill, on the shore of Gastineau Channel, where the same is to be applied and used for the purpose of generating power and for other purposes to be used in connection with the operation of a stamp mill at or near that point, and a portion of the water so diverted and appropriated is to be used at a point on the Colorado claim near Snow Slide Gulch for the purpose of driving a compressor plant at that point and for the purpose of generating power at that point and these waters so used on said Colorado claim will be conveyed by a pipe, flume, ditch along the route above indicated and taken from said pipe, flume and ditch to the extent so necessary at said last mentioned place if used for the purpose of furnishing power at that point as above stated. The remainder of the waters carried not used at this point at any time to be applied in connection with the operation of the stamp mill to be built near the Jorgenson saw mill as above stated.

NOTICE IS EXPRESSLY GIVEN, that the undersigned has not abandoned or waived any of the rights acquired under and by virtue of the notice of said L. D. Mulligan or by virtue of any of the work it has heretofore performed looking towards [1590] the diversion and appropriation of the waters of Gold

Creek or any other right or rights whatsoever it has at this present time to the waters of said creek.

Posted on the ground this 8 day of May, 1911.

ALASKA-JUNEAU GOLD MINING COMPANY.

By ROBT. A. KINZIE,
Agent and General Superintendent.

United States of America,
District of Alaska,—ss.

This is to certify that the foregoing is a true, correct and complete copy of the original instrument as the same appears of record in Book 10 of Placer, at page 195 of the records of the Juneau Recording Office.

Witness my hand and official seal this 7th day of June, 1911.

[Seal]

G. C. WINN,
Commissioner and Ex-officio District Recorder.

[1591]

[Transcript of Docket Entries in U. S A. v. Mackey
et al.]

*In the United States Commissioner's Court for the
District of Alaska, Division No. 1, Juneau Pre-
cinct.*

UNITED STATES OF AMERICA

vs.

ANGUS MACKAY, AL BLACK, ED. SYKES,
E. J. HUNSACKER, JOHN DOE, RICH-
ARD ROE and NELS HOE.

Oct. 3, 1910. Complaint made and sworn to by
Robt. A. Kinzie charging defendants with the crime

of "Assault with intent to Kill." A. P. C., sec. 18.

October 3, 1910. Warrant issued for arrest of defendants.

Oct. 3, 1910. Defendants Angus Mackey, Al Black, Ed Sykes and E. J. Hunsacker *wer* brought before the Court, complaint read to them and they were informed of their rights to the aid of counsel and witnesses. Mr. Burton appeared as counsel for the defendants. Regular hearing set for Oct. 4. 1910, 10 A. M. *Defendant* were released on bail of five hundred dollars each, B. M. Behrends, R. P. Nelson and Emery Valentine acting as sureties. Said bail was approved and accepted by the Court.

Oct. 3, 1910. Warrant returned indorsed, I hereby certify that I received the within warrant on the 3d day of October, 1910, at Juneau, Alaska, and that I served the same by arresting the within named defendants Al Black, Ed Sykes, E. J. Hunsacker and Angus McKay, and will now produce them in court.

Dated at Juneau, Alaska, Oct. 3, 1910.

H. L. FAULKNER,
United States Marshal.
By Hector McLean,
Office Deputy.

Marshal's Fees:

4 services.....\$12.00

Oct. 4, 1910. Defendants with attorney appeared in court. District attorney asked that case be postponed until United States could subpoena witnesses. Subpoena issued for following witnesses, R. A. [1592] Kinzie, Albert Burch, Henry Hendrickson, Andrew Koskelo, John Peterson and Eli McKey.

Hearing postponed till 3 P. M. Defendant asked

that present bail be allowed to stand during the entire hearing which was allowed by the court.

Oct. 4, 1910, 3 P. M. Robt. A. Kinzie sworn for the plaintiff. At 5 P. M. Court adjourned to 10 A. M. Oct. 5.

Oct. 4, 1910. Subpoena returned indorsed, I hereby certify and return that I served the within Subpoena on the therein named R. A. Kinzie, Albert Burch, Henry Hendrickson, Andrew Koskelo, John Peterson, and Eli McKey personally, at Juneau, in said District, on the 4th day of October, A. D. 1910.

H. L. FAULKNER,

U. S. Marshal.

By Hector McLean,

Office Deputy.

Marshal's Fees:

6 services\$4.50

October 5, 1910, 10 A. M. Albert Burch sworn for Government. At 12 noon court adjourned until 2 P. M.

Oct. 5, 1910, 2 P. M. Kennedy sworn for Government. District Attorneys announced at the completion of Mr. Kennedy's testimony that, that was the close of the government case.

Defendant were informed of their rights under the code and sec. 307 was read to them and was explained by the Court. They accepted the rights of this section and elected to be sworn and testify as witnesses in their own behalf.

Subpoena issued for defendants' witness, John Erickson.

John Erickson sworn for the defendants. At 5 P. M. court adjourned until Oct. 6 at 10 A. M.

Oct. 5, 1910. Subpoena returned indorsed, I hereby certify that I received the within subpoena on the 5 day of October, 1910, at Juneau, Alaska, and that I served the same on John Erickson on the 4th day of October at Juneau, Alaska, by reading and showing the original and [1593] delivering a ticket containing the substance thereof to the within named witness John Erickson personally and in person.

H. L. FAULKNER,
United States Marshal.

By J. F. Mullen,
Chief Office Deputy.

Dated at Juneau, Alaska, Oct. 5, 1910.

Marshal's fees: \$.75.

Oct. 6, 1910, 10 A. M. F. J. Wettrick sworn for defendants. Angus Mackey sworn for defendants, E. J. Hunsacker sworn for defendants. At 12 noon court adjourned until 2 P. M.

Two P. M. Al Black sworn for defendants, Ed Sykes sworn for defendants, and Mr. Barkan sworn for defendants. Mr. Wettrick recalled to stand. At 5 P. M. court adjourned until 7:30 P. M. same evening.

7:30 P. M. Oct. 6, 1910. At conclusion of arguments of Mr. Rustgard and Mr. Burton the following order was given by the Court.

It appearing from the evidence offered in this case that a crime was committed on the 3d day of October, and that the defendants in this case committed

said crime, it is therefore ordered that they be bound over to ———

Mr. Burton asked that the defendant be admitted to appear before *to* the District Court for the above-mentioned crime.

Mr. Burton asked that they be allowed to depart on the bail already furnished in this case until the following day when the new bail could be furnished. This was allowed.

Oct. 7, 1910. Defendants appeared in court and stated that they desired to furnish bail for their appearance before the District Court. It was ordered that they be admitted to bail in the sum of five hundred dollars and that the bond should be individually and not collectively. Each furnished bail bond for the said five hundred dollars, and after the examination of the sureties B. M. Behrends, Richard Nelson and Emery Valentine by this Court as provided by statute, the *bond* were accepted and it was ordered that the defendant be *release* from the custody of this court.

I hereby certify that the foregoing is a true and complete transcript of [1594] the material docket entries as made by me in the above mentioned case and that the complaint and warrant hereto attached are the originals in said action.

[Seal]

G. C. WINN.

Oct. 7, 1910. Bonds filed in the Clerk's office of the District Court. [1595]

[**Complaint in U. S. A v. Mackey et al.**]

*In the United States Commissioner's Court for the
District of Alaska, Division No. 1, Juneau Pre-
cinct.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ANGUS MACKKEY, AL BLACK, ED. SYKES,
E. J. HUNSACKER, JOHN DOE, RICH-
ARD ROE and NELS HOE,

Defendants.

COMPLAINT—ASSAULT WITH INTENT TO
KILL.

A. P. C., Sec. 18.

Comes now R. A. Kinzie, and accuses Angus Mackey, Al Black, Ed. Sykes, E. J. Hunsacker, John Doe, Richard Roe and Nels Hoe, and all and each of them, by this complaint of the crime of assault with intent to kill, committed as follows, to wit:

That the said Angus Mackey, Al Black, Ed Sykes, E. J. Hunsacker, John Doe, Richard Roe and Nels Hoe (the true names of the last three defendants above named being to complainant unknown, the said last three names being therefore fictitious names, but said last three named defendants being in company with and assisting the other defendants above named in the commission of the crime herein described, and were also known and can be recognized by Albert Burch below mentioned), on the 3d day of October, A. D. 1910, in Juneau Precinct, Division No. 1, District of Alaska,

did purposely, maliciously, willfully, unlawfully, and feloniously make an assault upon R. A. Kinzie, Albert Burch, Henry Hendrickson, Oscar H. Hershey, O. M. Harry, John Peterson and Peter Nelson (the last two names being fictitious, the true names of said two last named parties being to complainant unknown), and each and *al* of them, with the intent then and there to kill them, and each of them, the said R. A. Kinzie, Albert Burch, Henry Hendrickson, Oscar H. Hershey, O. M. Harry, John Peterson and Peter Nelson, by then and there so throwing, hurling, blasting, shooting and precipitating rocks [1596] with great force and violence at and upon them, the said R. A. Kinzie, Albert Burch, Henry Hendrickson, Oscar H. Hershey, O. M. Harry, John Peterson and Peter Nelson, with intent then and there to kill them, and each of them, the said R. A. Kinzie, Albert Burch, Henry Hendrickson, Oscar H. Hershey, O. M. Harry, John Peterson and Peter Nelson, the said rocks being of various sizes, many of them being of great size and weighing several hundred pounds, a further description of which rocks being to complainant unknown, said rocks being then and there dangerous weapons, and being then and there so thrown, hurled, blasted, shot, and precipitated by said Angus Mackey, Al Black, Ed. Sykes, E. J. Hunsacker, John Doe, Richard Roe and Nels Hoe, with sufficient force and violence to crush and kill the said R. A. Kinzie, Albert Burch, Henry Hendrickson, Oscar H. Hershey, O. M. Harry, John Peterson and Peter Nelson, contrary to the statutes in such case made and provided and against the peace

and dignity of the United States of America.

ROBT. A. KINZIE.

United States of America,
District of Alaska,—ss.

I, R. A. Kinzie, being first duly sworn, depose and state as follows, to wit:

That I am a citizen of the United States over the age of twenty-one years; that I am the person who made and offered the foregoing complaint; that before signing the same I read the same and know the same to be true.

ROBT. A. KINZIE.

Subscribed and sworn to before me this 3d day of October, A. D. 1910.

[Seal]

G. C. WINN,

United States Commissioner and Ex-officio Justice
of the Peace for Juneau Precinct. [1597]

[Endorsed]: U. S. Witnesses:

R. A. Kinzie, Treadwell, Alaska.

Albert Burch “ “

Kennedy “ “

Plaintiff's Witnesses:

John Erickson, Juneau.

F. J. Wettrick “

Angus Mackey “

Al Black “

E. J. Hunsacker “

Ed Sykes “

Barnaby “

Plaintiff's witnesses not called may be found in Transcript.

G. C. WINN,
Comr.

733-B. Filed Oct. 3, 1910. G. C. Winn, Comr.
[1598]

*In the United States Commissioner's Court for the
District of Alaska, Division No. 1, Juneau Pre-
cinct.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ANGUS MACKEY, AL BLACK, ED SYKES,
E. J. HUNSACKER, JOHN DOE, RICH-
ARD ROE and NELS HOE,

Defendants.

Warrant [in U. S. A. v. Mackey et al.].

To the United States Marshal of the District of
Alaska, Division No. 1 or any of his Deputies:

Information on oath having been made before me
that the crime of assault with intent to kill in viola-
tion of Section 18 of the Alaska Criminal Code has
been committed, and accusing Angus Mackey, Al
Black, Ed Sykes, E. J. Hunsacker, John Doe, whose
true name is unknown, and Richard Roe, whose true
name is unknown, and Nels Hoe, whose true name
is unknown, said names being fictitious names, and
said persons are all known to and can be recognized
by Albert Burch, you are therefore commanded to
arrest the said Angus Mackey, Al Black, Ed. Sykes,

E. J. Hunsacker, John Doe, whose true name is unknown, Richard Roe, whose true name is unknown, and Nels Hoe, whose true name is unknown, and produce them in court that they may be dealt with according to law.

Witness my hand and official seal this 3d day of October, 1910.

[Seal]

G. C. WINN,
Commissioner and Ex-officio Justice of the Peace.
[1599]

United States of America,
District of Alaska,
Division No. 1,—ss.

I hereby certify that I received the within warrant on the 3d day of October, 1910, at Juneau, Alaska, and that I served the same by arresting the within named defendants Al Black, Ed Sykes, E. J. Hunsacker and Angus McKay, and will now produce them in court.

Dated at Juneau, Alaska, Oct. 3, 1910.

H. L. FAULKNER,
United States Marshal.
By Hector McLean,
Office Deputy.

Marshal's Fees:

4 service\$12.00

Filed Oct. 3, 1910. G. C. Winn. Filed Oct. 7, 1910. H. Shattuck, Clerk. By H. Malone, Deputy. [1600]

**[Deed Dated December 8, 1899—J. P. Corbus to
Alaska-Juneau Gold Mining Company.]**

THIS INDENTURE, made this 8th day of December, in the year of our Lord one thousand eight hundred and ninety nine.

Between J. P. Corbus of Douglas Island, the party of the first part and the Alaska Juneau Gold Mining Company, a corporation, organized under the laws of the State of California, and doing business in Alaska, the party of the second part,

WITNESSETH: That the said party of the first part for and in consideration of the sum of One Hundred Dollars (\$100.00) lawful money of the United States to him in hand paid and other valuable consideration, the receipt whereof is hereby acknowledged, does by these presents, grant, bargain, sell, remise, release and forever quit-claim unto the said party of the second part and to its successors and assigns that certain placer mining claim, containing fifteen hundred linear feet on the Oregon Lode, together with surface ground three hundred linear feet in width on each side of lode line, situate near the head of the Last Chance Basin Gold Creek, in the Harris Mining District, District of Alaska, and described in the notice of location as follows:

Commencing at this notice and monument, the said monument being identical with corner No. 3, S. No. 142, Last Chance; thence N. 17.15 E. 130 feet to Cor. No. 2, S. No. 258—1500 feet to post; thence N. 84.00 E. 150 feet to post; intersect west side line Lotta S. No. 87; thence S. 33 45E. 550 feet to post on west side line of Lotta S. No. 87, thence S. 17.15

W. 970 feet to post on North side line Colorado; thence S. 4.00 W. 600 feet to Cor. No. 2, S. No. 142, to the place of beginning.

Containing an area of 18 acres more or less.

Together with all the dips; spurs and angles and also all the metals, ores, gold and silver bearing quartz, rock and earth therein and all the rights, privileges and franchises thereto incident, appendant, and appurtenant or therewith usually had and enjoyed; And also all and singular the tenements, hereditaments and appurtenances thereto belonging or in any wise appertaining and the rents, issues and [1601] profits thereof.

TO HAVE AND TO HOLD all and singular the said premises together with the appurtenances and privileges thereto incident, unto the said party of the second part, its successors and assigns forever.

IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and seal the day and year first above written.

J. P. CORBUS.

Signes, sealed and delivered, in presence of

JAMES CHRISTOE.

A. N. HOFFMAN.

United States,

District of Alaska,—ss.

Before me the undersigned, a Notary Public in and for the District of Alaska, on the 8th day of December, A. D. 1899, personally appeared J. P. Corbus, to me known as the person named in and who executed the foregoing instrument and acknowledged to me that he executed the same freely and voluntarily for the uses and purposes therein mentioned.

IN TESTIMONY WHEREOF I have hereunto set my hand and official seal the day and date last above written.

[Seal]

M. GRINNELL,

Notary Public for Alaska.

Filed for record at 1 P. M. Dec. 9, 1899.

NORMAN E. MALCOLM,

Recorder.

United States of America,
District of Alaska,—ss.

This is to certify that the foregoing is a true, correct and complete copy of the original instrument as the same appears of record in the office of the Recorder for the Juneau Recording Precinct, Alaska, in Book 16 of Deeds at page 425 of said records.

Witness my hand and official seal this 7th day of June, 1911.

[Seal]

G. C. WINN,

Commissioner and Ex-officio District Recorder.

[1602]

*In the United States Commissioner's Court for the
District of Alaska, Div. No. 1, at Juneau Pre-
cinct.*

UNITED STATES OF AMERICA

vs.

ANGUS MACKEY, AL BLACK, ED SYKES and
E. J. HUNSACKER.

Warrant [in U. S. A. v. Mackey. et. al.].

IN THE NAME OF THE UNITED STATES OF
AMERICA.

To the United States Marshal for the District of
Alaska, or Any Deputy, Greeting:

Information upon oath having been this day laid
before that the crime of attempting to destroy prop-
erty belonging to the Alaska Juneau Gold Mining
Company and to commit a crime against the crew of
men working for said Alaska Juneau Gold Mining
Company in the canyon of Gold Creek, by hurling
and precipitating large quantities of rock upon said
property and men, and threatening to continue said
unlawful acts and purposes and to further destroy
the property of said Alaska Juneau Gold Mining
property and endanger the lives of said crew, and
accusing Angus Mackey, Al. Black, Ed. Sykes and
E. J. Hunsacker thereof, you are therefore hereby
commanded forthwith to arrest the said Angus
Mackey, Al. Black, Ed. Sykes and E. J. Hunsacker
and bring them before me at my office at the court-
house in the City of Juneau, Alaska, there to be dealt
with according to law.

[Seal]

G. C. WINN,

Commissioner and Ex-officio Justice of the Peace.

Dated October 4th, 1910. [1603]

United States of America,
District of Alaska,
Division No. 1,—ss.

I hereby certify that I received the within war-
rant on the 4th day of October, 1910, at Juneau,

Alaska, and that I served the same on said day and place, by arresting the within-named defendants, Angus Mackey, Al Black, Ed. Sykes and E. S. Hunsacker, and will now produce them in court.

Dated at Juneau, Alaska, Oct. 5, 1910.

H. L. FAULKNER,
United States Marshal.
By Hector McLean,
Office Deputy.

Marshal's fees:

4 services..... \$12.00

[Endorsed]: Filed Oct. 5, 1910. G. C. Winn,
Comr. [1604]

*In the United States Commissioner's Court for the
District of Alaska, Division No. 1, Juneau Pre-
cinct.*

UNITED STATES OF AMERICA,
Plaintiff,
vs.

ANGUS MACKEY, AL BLACK, ED. SYKES
and E. J. HUNSACKER,
Defendants.

Information and Complaint of Threatened Crime.
[in U. S. A. v. Mackey et al.].

Comes now R. A. Kinzie, and complains to the above-entitled court, and alleges:

That he is the superintendent and general manager of the Alaska Juneau Gold Mining Company, a corporation duly authorized to carry on and transact business and own property in the District of Alaska.

That for more than one month last past said cor-

poration has been, and now is, engaged in erecting a dam and building flumes and ditches at a point on and near Gold Creek, in said precinct, division and district, known and designated as Gold Creek Canyon, situated approximately One Thousand feet below what is known as the Ebner Mill.

That for several days last past, the said defendants have been endeavoring to drive feloniously, unlawfully and forcibly this complainant and a crew of men under him in the employ of the said Alaska Juneau Gold Mining Company, a corporation, away from said premises and said dam, ditch, flume and other property and have endeavored to destroy and have partly destroyed much property in the possession of said corporation [1605] and belonging to it, and situated at and near the said canyon, and to that end have thrown, hurled and precipitated large quantities of rock at this complainant, Albert Burch, Henry Hendrickson, Oscar H. Hershey, O. M. Harry and other persons in the employ of said corporation with the intent and for the purpose of killing this *complaint* and the said Albert Burch, Henry Hendrickson, Oscar H. Hershey, O. M. Harry and others. That such rocks have been hurled down a steep declivity by the use of large quantities of dynamite by the said defendants and other men in their employ, or working conjointly with them; that this complainant and several of the employees of the said corporation have been struck by the rocks so hurled by said defendants and other persons working with them and whose names are to this complainant unknown.

That upon a complaint filed in this Court by this complainant during the afternoon of the 3rd day of October, 1910, said defendants were brought into court and arraigned upon a charge of assault with intent to kill this complainant, Albert Burch, Henry Hendrickson, Oscar H. Hershey, O. M. Harry and others, and were by this court released on bail; but while said defendants were so at large on bail, they hurled, shot and precipitated large quantities of rock down the said declivity and upon the works and property of said corporation in the charge of this complainant, at the point above named, and thereby and about 8 o'clock in the forenoon of this day, destroyed a flume and other property belonging to said corporation and in its possession at said point.

That Newark L. Burton, counsel for said defendants, in substance and effect, stated in open court, at about 10 o'clock, in the forenoon of this, the 4th day of October 1910, in the presence of the said defendants, that the said defendants wished an early hearing and an early disposal of their [1606] case because they desired immediately to proceed back to the place above named and continue the crime herein referred to, and this complainant verily believes that said defendants intend to continue to hurl rocks at this complainant and other employees of the said corporation for the purpose and with the intent of killing them, and for the purpose and with the intent of maliciously and feloniously destroying the property of the said corporation above described and such other property as the said corporation has in its possession on and at said premises. That in the

opinion of this complainant it is by the sheerest luck and good fortune that several men in the employ of the said corporation have not been killed or grievously injured by the said criminal and felonious acts of the said defendants and men associated with them in said crime, and that, unless this court take all lawful means to compel the defendants and the men associated or in their employ or under their direction in any way to desist from said criminal acts and hold the said defendants and all men connected with them in said acts or in any way under their command and direction on bail or sufficient bond to keep the peace, the said defendants will continue their aforementioned criminal acts and depredation and various and serious crimes will be committed by the said defendants and men in their employ and under their direction and property of great value belonging to said corporation and in its possession will be maliciously, unlawfully and feloniously destroyed by the said defendants and their associates, or men under their direction or in their employ, and persons in the employ of the said corporation will by the said defendants and such other persons as may act in conjunction with them be maliciously and feloniously killed or grievously injured. [1607]

WHEREFORE, complainant prays that the said defendants above named and such other persons as may be acting in conjunction with them as above stated, be brought before this Court, and that they be required to furnish proper security by undertaking or otherwise, in such sum as provided by law and which to this Court may seem fit and proper, to keep

the peace toward the people of the District of Alaska and particularly toward this complainant, the Alaska Juneau Gold Mining Company, a corporation, and its employees.

ROBT. A. KINZIE.

United States of America,
District of Alaska,—ss.

I, Robert A. Kinzie, being first duly sworn, depose and state as follows: That I am a citizen of the United States over the age of twenty-one years; that I am the person who made and offered the foregoing complaint and that before signing the same, I read the same and know the same to be true.

ROBT. A. KINZIE.

Subscribed and sworn to before me this 4th day of October, A. D. 1910.

G. C. WINN,
U. S. Commissioner and ex-officio Justice of the
Peace, Juneau Precinct.

[Endorsed]: Filed Oct. 4, 1910. G. C. Winn,
Comr. [1608]

*In the United States Commissioner's Court for the
District of Alaska, Division No. 1, Juneau Pre-
cinct.*

UNITED STATES OF AMERICA

vs.

F. J. WETTRICK.

Warrant [in U. S. A. v. Wettrick].

IN THE NAME OF THE UNITED STATES OF
AMERICA.

To the United States Marshal for the District of
Alaska, or any Deputy, Greeting:

Information upon oath having this day been laid
before me that the crime of destroying property and
accusing the within names person of committing
the same, you are hereby commanded forthwith to
arrest the said F. J. Wettrick and bring him before
me at my office at the court house in the City of Ju-
neau, Alaska, there to be dealt with according to
law.

[Seal]

G. C. WINN,

Commissioner and ex-officio Justice of the Peace.

Dated Nov. 2, 1910.

United States of America,
District of Alaska,
Division No. 1,—ss.

I hereby certify that I received the within War-
rant on the 2d day of November, 1910, at Juneau,
Alaska, and that I served the same on said day and
place by arresting the within-named defendant, F.
J. Wettrick, and will now produce him in Court.

Dated at Juneau, Alaska, Nov. 2d, 1910.

H. L. FAULKNER,
United States Marshal.
By Hector McLean,
Office Deputy.

Marshal's Fees:

One service.. . . . \$2.00

1748 *Ebner Gold Mining Company vs.*

[Endorsed]: Filed Nov. 2, 1910. G. C. Winn,
Comm. [1609]

*In the United States Commissioner's Court for the
District of Alaska, Division No. 1, Juneau Pre-
cinct.*

UNITED STATES OF AMERICA,

vs.

AL GRAHAM, HARRY MALONEY and D. J.
REARDON,

Warrant [in U. S. A. v. Graham et al.].

IN THE NAME OF THE UNITED STATES OF
AMERICA.

To the United States Marshal for the District of
Alaska, or any Deputy, Greeting:

Information upon oath having this day been laid
before me that the crime of Willfully destroying
property and accusing the within-named person of
committing the same, you are therefore hereby com-
manded forthwith to arrest the said John Doe Rich-
ard Roe and bring him before me at my office at the
courthouse in the City of Juneau, Alaska, there to
be dealt with according to law.

G. C. WINN,

Commissioner and ex-officio Justice of the Peace.

Dated Nov. 1, 1910.

United States of America,

District of Alaska,

Division No. 1,—ss.

I hereby certify that I received the within warrant
on the 2d day of November, 1910, at Juneau, Alaska,

and that I served the same on said day and place by arresting the within-named defendants, Al Graham, D. J. Reardon and Harry Maloney, and will produce them now in court.

Dated at Juneau, Alaska, Nov. 3, 1910.

H. L. FAULKNER,
United States Marshal.

By John Lund,
Deputy.

Marshal's Fees:

3 services.....\$6.00

Endorsed: Returned and filed Nov. 3, 1910. G. C. Winn, Com. [1610]

[Affidavit of M. Barrett Re Work Performed on Mining Claims.]

District of Alaska,
Juneau,—ss.

The within instrument was filed for record at 2 o'clock P. M., Dec. 30, 1901, and duly recorded in book 16 of Lodes on page 231 of the records of said District.

HIRAM H. FOLSOM,
Juneau District Recorder.

United States of America,
District of Alaska,—ss.

Before me the subscriber personally appeared M. Barrett who being duly sworn, saith: That at least one hundred dollars' worth of work or improvements were performed or made upon each of the following named mining claims, situated in Harris Mining District, District of Alaska, between the 1st day of January and the 31st day of December A. D.

1750 *Ebner Gold Mining Company vs.*

1901, viz.: The Idaho Lode, the Colorado, the Oregon, The Wyoming, The Nevada and the Maryland.

Such expenditure was made by or at the expense of the Alaska Juneau Gold Mining Company, owner of said claims, for the purpose of complying with the laws and holding said claims.

M. BARRETT.

Subscribed and sworn to before me this 30th day of December, A. D. 1901.

[Seal]

E. F. ROSE,

Notary Public for Alaska.

United States of America,
District of Alaska,—ss.

This is to certify that the foregoing is a true, correct and complete copy of the original instrument as the same appears of record in the office of the Recorder for the Juneau Recording Precinct in Book 16 of Lodes, at page 231.

Witness my hand and official seal this 17th day of May, 1911.

[Seal]

G. C. WINN,

U. S. Commissioner, Ex-officio Recorder. [1611]

(S)

*Justice's Court for the Precinct of Juneau, Division
No. 1, District of Alaska.*

UNITED STATES OF AMERICA

vs.

AL GRAHAM, JOHN DOE, HARRY MALONY,
RICHARD ROE, D. J. REARDON, Whose
True Names are not Known.

Complaint [in U. S. A. v. Graham et al.].

Sect. 60, Chapter 3, Alaska Criminal Code.

The defendants Al. Graham, Harry Malony, D. J. Reardon and Richard Roe, whose true names are not known but who can be identified *by* IS ACCUSED by the complainant G. Campbell Jones in this complaint of the crime of Destroying Property committed as follows, to wit: The said Al Graham, John Doe and Richard Roe whose true names are Harry Malony and D. J. Reardon in the District of Alaska and within the jurisdiction of this court, did, willfully, unlawfully and on the 1st day of November, 1910, at Juneau, Alaska, *did* break, destroy and mutilate a flume, the same being then and there the property of the Alaska Juneau G. M. Co. contrary to the form to the statutes in such case made and provided and against the peace and dignity of the United States of America.

Signed—G. CAMPBELL JONES.

District of Alaska

Division No. 1,—SX.

I, G. Campbell Jones, being duly sworn deposes and say that the foregoing complaint is true as I verily believe.

G. CAMPBELL JONES.

Subscribed and sworn to before *he* this 1st day Nov., 1910.

[Seal]

G. C. WINN,

Commissioner and ex-officio J. P.

[Endorsed]: U. S. vs. Al Graham et al. Filed Nov. 1, 1910. G. C. Winn, Comr. [1612]

*Justice's Court for the Precinct of Juneau, Division
No. 1, District of Alaska.*

UNITED STATES OF AMERICA

vs.

F. J. WETTRICK.

Complaint [in U. S. A. v. Wettrick].

Sect. 60, Chapter 3, Alaska Criminal Code.

The defendant F. J. Wettrick IS ACCUSED by G. C. Jones in this complaint of the crime of Destroying Property Committed as follows, to wit: The said F. J. Wettrick in the District of Alaska and within the jurisdiction of this court, did, willfully, unlawfully, on the 1st day of November, 1910, at Juneau Alaska, did break destroy, mutilate or cause to be broken destroyed and mutilated a flume, the same being then and there the property of the A. J. G. M. Co. contrary to the form to the statutes in such case made and provided and against the peace and dignity of the United States of America.

Signed—G. C. JONES.

District of Alaska

Division No. 1,—SX.

I, G. C. Jones, being duly sworn, deposes and say that the foregoing complaint is true as I verily believe.

G. C. JONES.

Subscribed and sworn to before *ke* this 2nd day of Nov. 1910.

[Seal]

G. C. WINN,
Commissioner and ex-officio J. P.

[Endorsed]: Filed Nov. 2, 1910. G. C. Winn,
Comr. [1613]

**[Quitclaim Deed Dated November 6, 1910—W. R.
Lindsay to Alaska-Juneau Gold Mining Com-
pany.]**

THIS INDENTURE, made the 6th day of November in the year of our Lord One thousand Nine Hundred and ten, BETWEEN W. R. Lindsay the party of the first part and the Alaska Juneau Gold Mining Company, a corporation, the party of the second part:

WITNESSETH, That the said party of the first part for and in consideration of the sum of One and no/100 Dollars lawful money of the United States of America, to him in hand paid by the said party of the second part the receipt whereof is hereby acknowledged, does by these presents remise, release and forever quit-claim unto the said party of the second part, and to its successors and assigns, the following described tract, lot or parcel of land, situated, lying and being in Harris Mining District, District of Alaska and known as the Canyon Vein or Lode Claim particularly bounded and described as follows, to wit:

Beginning at notice of location, which is situated on the left bank of Gold Creek about 50 feet up the stream from the lower Alaska Juneau dam and about 400 feet down the stream from the lower Ebner mill in Harris Mining District, Alaska and runig 900 feet northwesterly and 600 feet southeasterly therefrom with 300 feet on each side of the center line

so described. This claim is bounded on its north-easterly side by the Lotta Lode Mining Claim U. S. Lot No. 87.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD, all and singular, the said premises, together with the appurtenances unto said party of the second part, and to its successors and assigns forever.

IN WITNESS WHEREOF, the said party of the first part has herunto set his hand and seal ~~th~~

W. R. LINDSAY. [Seal]

_____. [Seal]

Signed, Sealed and Delivered in the presence of

SIMM HELLENTHAL.

W. S. BAYLESS. [1614]

District of Alaska,

Juneau,—ss.

THIS IS TO CERTIFY, That on this 6th day of June A/D. 1911, before me the undersigned, Notary Public in and for the District of Alaska, duly commissioned and sworn personally ~~appeared~~ came W. R. Lindsay to me known to be the individual described in and who executed the within instrument, and acknowledged to me that he signed and sealed the *same* as his free and voluntary act and deed for the uses and purposes therein mentioned.

Witness my hand and official seal the day and year

#27—Admitted

4-683.

MINERAL SURVEY NO. 641.

Lot No.....

Juneau Land District.

FIELD NOTES

Of the Survey of the Mining Claim of
**THE ALASKA JUNEAU GOLD MINING
 COMPANY**

Known as the

COLORADO LODGE

Harris Mining District,

.....County,

Section, Township....., Range.....

Surveyed under instructions dated August 31,
 1904.

By LLOYD G. HILL,

U. S. Mineral Surveyor.

Claim located October 31, 1899, 19

Survey commenced September 3, 1904.

Survey completed September 4, 1904. [1616]

FIELD NOTES OF U. S. MINERAL SURVEY
No. 641.

Feet.

INSTRUMENT.

Survey made with a Gurley Engineer's
 Transit, having a five inch needle, full
 compass box, variation plate reading to
 single minutes, a graduated circle for
 measuring angles independent of the

needle and reading by opposite verniers to single minutes. Instrument and steel tape, Gurley, tested and registered at the office of the U. S. Surveyor General at Sitka, Alaska.

Survey commenced September 3, 1904.

Prior to commencing this survey, I set instrument over U. S. Loc. Mon. No. 2, established August 15, 1887, in Silver Bow Basin, situate about four miles east from Juneau, and directing the telescope on the established meridian, I read the needle $30^{\circ} 00'$ E. of N. I then starting from U. S. Loc. Mon. No. 2 connect with Cor. No. 1, Colorado lode, Sur. No. 641, by means of a traverse line, as shown in these notes and determine the course and distance to be S. $86^{\circ} 47'$ W. 5817.15 ft. dist.

COLORADO LODGE.

Beginning at Cor. No. 1, Colorado lode, identical with Cor. No. 4, Royal lode, Survey No. 238, whence:

S. E. Location corner Colorado lode bears S. $33^{\circ} 45'$ E. 77.64 Ft. dist.

U. S. Loc. Mon. No. 2, situate in Silver Bow Basin, bears N. $86^{\circ} 47'$ E. 5817.15 ft. dist.

Cor. No. 2 Nevada lode, Survey No. 612 bears S. $56^{\circ} 15'$ W. 86.30 ft.

Set a post 4 ft. long, 4 ins. sq. 2 ft. in the ground in mound of earth and stone,

1758

Ebner Gold Mining Company vs.

marked deeply on side facing claim 1-
Colorado-S-641, whence

Face of ledge, 2 ft. above ground, with
cross (+) chiseled on side bears S. 16°
30' E. 24.5 ft. dist. marked B-R-1-S-
641.

No other bearings available.

Feet

Thence S. 56° 15' W.

Var. 30° 00' E.

Along line 2-3 Nevada lode Survey No.
612.

86.30 Cor. No. 2,

Identical with Cor. No. 2, Sur. No. 612,
Nevada lode, a diorite stone 24x12x8 ins.
set 6 ins. to bed rock with mound of
stone, with a cross (+) cut on top,
marked deeply on side facing the claim,
2-Sur-641, whence:

Face of bluff, 3x3x4 ft. above ground,
marked with a cross (+) as bearing rock
to Cor. No. 2, Nevada lode, Sur. No. 612,
bears S. 33° 52' E. 8.6 ft. dist. marked
also BR-2-641.

No other bearings available.

Thence S. 41° 15' E.

Var. 30° 00' E.

Along line 2-1 Nevada lode, Sur. No. 612.

34.96 Cor. No. 3,

Set post 4 ft. long, 4 ins. sq. 2 ft. in ground
in mound of stone and earth, marked

Alaska-Juneau Gold Mining Company. 1759

deeply on side facing claim, 3-Colorado-Sur-No-641, whence:

S. E. Location corner, Colorado bears N. $84^{\circ} 00'$ E. 92.36 ft. dist.

Thence S. $84^{\circ} 00'$ W.

Var. $30^{\circ} 00'$ E.

Along steep mountain side,

1381.75 Loc. Cor. No. 4,

Set post 4 ft. long, 4 ins. sq. 2 ft. in ground in mound of stone, marked deeply on side facing claim, 4-Colorado-Sur-No-641, whence:

Spruce 24 ins. diam. bears N. $52^{\circ} 00'$ E. 35 ft. dist. marked B-T-4-Colorado-Sur-No-641.

No other bearings available.

Thence N. $35^{\circ} 45'$ W.

Var. $30^{\circ} 00'$ E.

[1617]

Feet

Descend mountain side.

300.00 Lode line, point of discovery bears N. $84^{\circ} 00'$ E. 34.11 ft. dist. Applicant for survey claiming S. $84^{\circ} 00'$ W. 34.11 ft. and N. $84^{\circ} 00'$ E. 1440.00 ft. on lode line from discovery.

312.00 Center of Pack trail from Juneau to Silver Bow Basin, course S. $58^{\circ} 30'$ W. and N. $58^{\circ} 30'$ E.

312.00 Whence mouth of Colorado tunnel, bears N. $84^{\circ} 00'$ E. 35 ft. dist., tunnel 6x7x30 ft. long, trending S. $34^{\circ} 00'$ E.

500.00 Enter Creek bottom.

1760 *Ebner Gold Mining Company vs.*

550.00 Center of Gold Creek, 24 ft. wide, course
 S. 30° 00' W. down stream.

600.00 Loc. Cor. No. 5,
 Identical with Cor. No. 3, S-142-Last
 Chance. Set post 4 ft. long, 4 ins. sq.
 2 ft. in ground, surrounded by mound
 of stone marked 5-Colorado-S-641,
 whence:

 Granits boulder 3x4x3 ft. above ground
 bears N. 5° 00' W. 27 ft. dist. marked
 with a cross (+) and BR-5-S-641.

 Surface steep mountain side, until creek
 bottom is reached. Soil bed-rock, slide-
 rock and gravel, supporting dense un-
 dergrowth of bushes.

 Thence N. 84° 00' E.

 Var. 30° 00' E.

 Along creek bottom.

110.00 Center of Gold Creek, 24 ft. wide, course
 S. 56° 00' W. down stream.

150.00 Leave creek bottom and ascend mountain
 side.

495.00 Center of old pack trail to Silver Bow
 Basin, course N. 26° 00' E. and S. 40°
 00' W.

1474.11 Loc. Cor. No. 6.

 On line 4-5 Royal lode. Sur. No. 238,
 whence:

 Cor. No. 5 Royal lode, bears N. 33° 45' W.
 567.64 ft. dist.

 Set post 4 ft. long, 4 ins. sq. 2 ft. in ground
 in mound of stone, marked deeply on

Alaska-Juneau Gold Mining Company. 1761

side facing claim 6-Colorado-S-641,
whence:

A rock $2\frac{1}{2} \times 4 \times 3\frac{1}{2}$ ft. above ground bears
N. $9^{\circ} 30'$ E. 24 ft. dist. marked BR-6-

Feet

S-641.

No other bearings available.

Surface ascending toward the south. Soil
gravel, slide-rock and bed-rock, support-
ing dense underbrush and alder bushes.

Thence S. $33^{\circ} 45'$ E.

Var. $30^{\circ} 00'$ E.

Along line 5-4 Royal lode, Survey No. 238.

300.00 Center of snow slide gulch. 90 ft. wide,
course east.

522.36 Cor. No. 1 the place of beginning.

Surface sloping toward the north. Soil
slide-rock, boulders and gravel. Sup-
porting dense undergrowth of bushes.

Containing an area of 17.862 acres.

September 4, 1904.

Courses deflected from the true meridian,
determined by deflecting the angle at the
established meridian as described in the
foregoing field-notes.

The Colorado is bounded on the north by
unknown claims, on the east by the Royal
lode, Sur. No. 238 and the Nevada lode
Sur. No. 612, on the S. by unknown
claims, on the W. by the Idaho placer
of this survey. The established monu-
ments of this survey are identical with

the respective stakes as found on the ground with the exception of corners 1, 2 and 3 of the Colorado lode, where the ground in conflict with the Nevada lode was abandoned and any disagreement between these field notes and the certificates of location respecting the exact position of any particular corner, is due to error in the latter, excepting the S. E. location corner of the Colorado lode, which was within the Nevada lode, Sur. No. 612, and to avoid conflict was set on the Nevada side line.

EXPENDITURE OF FIVE HUNDRED DOLLARS.

I hereby certify that the value of the labor and improvements, [1618] on the claim, made for the benefit of each location in the group, and placed thereon by the Alaska Juneau Gold Mining Company or its grantors is not less than thirteen hundred and fifty dollars (\$1350) and consist of 30 ft. of tunnel, 6x7 ft. in size, on the Colorado lode, costing \$15 per foot (\$450), and 60 ft. of tunnel on the Idaho Placer costing \$15 per foot (\$900).

General Description.

The ground covered by these locations is an undulating mountain side, forming the south east boundary of the Last Chance Basin. There is very little timber of any description on the surface, it being covered with a dense undergrowth of alder bushes.

The mineral was first discovered on the Colorado lode near the west end line and a small prospect tun-

nel was driven on the ore. The tunnel on the Idaho Placer is 60 ft. long in auriferous gravel and slide-rock which required timbering. The development work consists of the two tunnels, shown on the plat and described in the foregoing field notes of this survey,

LLOYD G. HILL,
U. S. Deputy Mineral Surveyor. [1619]

4-669

Directions.—1. Carry out the area in acres to three decimals, and all other calculations to two decimals only.

2. In balancing Lat. and Dep. do not obliterate or change the original figures:
Put the corrected figure or figures above in red ink. Do not change the footing of the original figures, but put below them the corrected footing in red ink.

3. In calculations for balancing fallings should be proportional to the lengths of the lines.
The corrections of fallings take result to nearest hundredth. In calculations of N. and S. areas drop all after second decimal. Surveyors are advised to use the Standard Field Tables issued by G. L. O.

TABLING AND CALCULATIONS OF AREA OF THE COLORADO LODGE.

No.	Course.	Distance.	Latitudes.				Departures.				Double M. D.	N. Areas.	S. Areas.
			Feet	North.	South.	East.	West.						
1.	S. 56° 15' W.		86.30		47.95		71.76		3440.72			164982.52	
2.	S. 41° 15' E.		34.96		26.28	23.05			3392.01			89108.10	
3.	S. 84° 00' W.		1381.75		144.43		1374.18	9*	2040.87			294762.85	
4.	N. 33° 45' W.		600.00	498.88			333.34		333.34	166296.66			
5.	N. 84° 00' E.		1474.11	154.09		1466.03			1466.03	225900.56			
6.	S. 33° 45' E.		522.36		434.32	290.21			3222.27			1399496.31	
				652.97	652.98	1779.29	1779.28			392197.22		1948349.78	
					652.97*		1779.29*					392197.22	
												2	1556152.56
										435.60		778076.28	
												178.62	Acres.
Traverse From Cor. 1 Colorado Lodge to U. S. L. Mon. No. 2.													
1.	S. 33° 45' E.		30.00		24.94	16.67						From Cor. 1 Colorado to line Alaska Juneau Tunnel	
2.	East.		4740.00			4740.00						Along line Alaska Juneau Tunnel.	
3.	N. 71° 31' E.		1108.49	351.43		1051.31						From Alaska Juneau Raise to U. S. L. M. No. 2	
4.	S. 86° 47' W.		5817.15		326.41		5807.98					Course & Distance From U. S. L. M. No. 2 to Cor. 1 Colorado.	
				351.43	351.35	5807.98	5807.98						

*In red ink.

4—685.

FINAL OATHS FOR SURVEYS.

LIST OF NAMES.

A list of the names of the individuals employed by Lloyd G. Hill, United States Mineral Surveyor, to assist in running, measuring, and marking the lines, corners, and boundaries described in the foregoing field notes of the survey of the mining claim of The Alaska Juneau Gold Mining Company known as the Colorado lode and showing the respective capacities in which they acted.

A. L. PREBLE,	Chainman.
J. A. SNOW,	Chainman,
CHRISTIAN KROUGH,	Axman.
—————,	Flagman.

FINAL OATHS OF ASSISTANTS.

We, A. L. Preble, J. A. Snow and Christian Krough, do solemnly swear that we assisted Lloyd G. Hill, United States Mineral Surveyor, in marking the corners and surveying the boundaries of the mining claim of The Alaska Juneau Gold Mining Company, known as the Colorado lode, represented in the foregoing field notes as having been surveyed by said mineral surveyor and under his direction; and that said survey has been in all respects, to the best of our knowledge and belief, faithfully and correctly executed, and the corner and boundary monuments established according to law and the instruc-

tions furnished by the United States Surveyor-General for Alaska.

A. L. PREBLE,	Chainman.
J. A. SNOW,	Chainman,
CHRISTIAN KROUGH,	Axman.
—————,	Flagman.

Subscribed and sworn to by the above-named persons before me this eleventh day of October, 1904.

[Seal]

E. T. ROSE,

Notary Public for Alaska. [1621]

4—686.

FINAL OATH OF U. S. MINERAL SURVEYOR.

I, Lloyd G. Hill, U. S. Mineral Surveyor, do solemnly swear that, in pursuance of instructions received from the United States Surveyor General for Alaska, dated August 31, 1904, I have, in strict conformity to the laws of the United States, the official regulations and instructions thereunder, and the instructions of said Surveyor General, faithfully and correctly executed the survey of the Mining Claim of The Alaska Juneau Gold Mining Company, known as the Colorado lode, situate in Harris Mining District, District of Alaska County, ———, in Section ———, Township No. ———, Range No. ———, and designated as Survey No. 641, as represented in the foregoing field notes, which accurately show the boundaries of said mining claim as distinctly marked by monuments on the ground, and described in the attached copy of the location certificate, which was received by me from the Surveyor General with said instructions, and that all the cor-

ners of said survey have been established and perpetuated in strict accordance with the law, official regulations and instructions thereunder; and I do further solemnly swear that the foregoing are the true and original field notes of said survey and my report therein, and that the labor expended and improvements made upon said mining claim by claimant or its grantors are as therein fully stated, and that the character, extent, location, and itemized value thereof are specified therein with particularity and full detail, and that no portion of said labor or improvements so credited to this claim has been included in the estimate of expenditures upon any other claim.

LLOYD G. HILL,
U. S. Mineral Surveyor.

Subscribed and sworn to by the said Lloyd G. Hill,
U. S. Mineral Surveyor, before me H. H. Folsom,
this eleventh day of October, 1904.

[Seal] H. H. FOLSOM,
U. S. Commissioner at Juneau, Alaska. [1622]

4—687.

SURVEYOR-GENERAL'S CERTIFICATE OF
APPROVAL OF FIELD NOTES AND SUR-
VEY OF MINING CLAIM.

DEPARTMENT OF THE INTERIOR,
Office of U. S. Surveyor-General,

Sitka, Alaska, December 21, 1904.

I, U. S. Surveyor-General for Alaska, do hereby
certify that the foregoing and hereto attached
Field Notes and Return of the Survey of the Mining

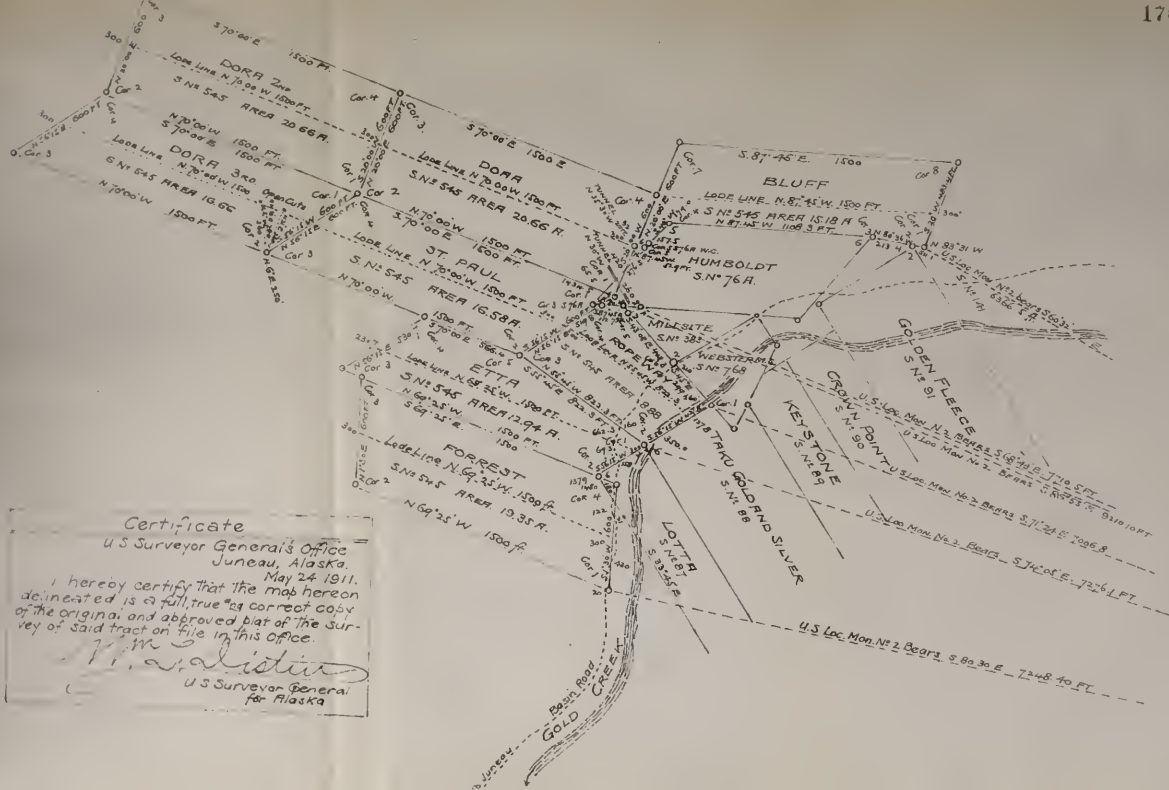
Claim of The Alaska-Juneau Gold Mining Company, known as the Colorado lode, situate in Harris mining district, Alaska, ——— County, ———, in Section ———, Township No. ———, Range No. ———, designated as Survey No. 641, executed by Lloyd G. Hill, U. S. Deputy Mineral Surveyor, September 3-4, 1904, under my instructions dated August 31, 1904, have been critically examined and the necessary corrections and explanations made, and the said Field Notes and Return, and the Survey they describe, are hereby approved. A true copy of the copy of the location certificate filed by the applicant for survey is included in the field notes.

WM. L. DISTIN,
U. S. Surveyor-General for Alaska. [1623]

Office of the U. S. Surveyor General,
Juneau, Alaska, May 19, 1911.

I certify that the foregoing transcript of the field notes of the survey of the Colorado lode, designated U. S. Mineral Survey No. 641 has been correctly copied from the original notes on file in this office.

WM. L. DISTIN,
U. S. Surveyor General. [1624]



Certificate

U S Surveyor General's Office
Juneau, Alaska.

May 24 1911.

I hereby certify that the map hereon delineated is a full, true and correct copy of the original and approved plat of the Survey of said tract on file in this office.

W. A. Liston
U S Surveyor General
for Alaska

[U. S. Patent for Samuel Coulter.]

U. S. PATENT FOR SAMUEL COULTER.

District of Alaska,
Juneau Recording Dist.,—ss.

The within instrument was filed for record at 11:10 o'clock May 5, 1890, and duly recorded in Book "K" on page 143 of the records of said Dist.

LOUIS L. WILLIAMS,
District Recorder.

General Land Office.

Mineral Certificate.

No. 15,564,

No. 16.

THE UNITED STATES OF AMERICA.

To all to whom these Presents shall come; GREET-
ING:

WHEREAS, in pursuance of the provisions of the Revised Statutes of the United States, Chapter Six, Title Thirty-two, and the legislation supplemental thereto, there has been deposited in the General Land Office of the United States the Plat and Field Notes of Survey and the Certificate No. 16 of the ex-officio Register of the Land Office at Sitka, Alaska, accompanied by other evidence whereby it appears that Samuel Coulter did, on the Tenth day of June, A. D. 1889, duly enter and pay for that certain mining claim or premises, known as the Lotta, Takou Gold and Silver, Keystone, Crown Point, Golden Fleece, Grand Review and Jewel Lode Mining Claims, designated by the ex-officio Surveyor General as Lots Nos. 87, 88, 89, 90, 91, 92 and 93 respectively, in the Harris Mining District, in Alaska, in the District of Lands subject to sale at Sitka, and bounded, described and platted as follows, with Magnetic Var-

iation thirty degrees east.

Beginning for the description of Lot No. 87, at a post marked No. 1, U. S. Survey No. 87.

Thence, first course, North fifty six degrees and fifteen minutes east one hundred and fifty feet to a post marked No. 2, U. S. Survey No. 87.

Thence, second course, south thirty-three degrees and forty five minutes east one thousand five hundred feet to a post marked No. 3 U. S. Survey No. 87.

[1626]

Thence, third course south fifty six degrees and fifteen minutes west one hundred and fifty feet to a post marked No. 4, U. S. Survey No. 87, three hundred feet to a post marked No. 5 U. S. Survey No. 87.

Thence, fourth course, North thirty three degrees and forty five minutes west one thousand five hundred feet to a post marked No. 6 U. S. Survey No. 87.

Thence, fifth course, north fifty six degrees and fifteen minutes east one hundred and fifty feet to post No. 1, the place of beginning said Lot No. 87 extending one thousand five hundred feet in length along said Lotta vein or lode and containing ten acres and thirty three hundredths of an acre.

Beginning for the Description of Lot No. 88 at a post marked No. 1 U. S. Survey No. 88, from which a ten stamp mill bears south forty nine degrees and thirty minutes east one hundred and forty ~~six~~ feet distant.

Thence, first course, north fifty six degrees and fifteen minutes east one hundred and twenty seven and eighty-five hundredths feet intersect the southwest boundary line of Lot No. 76 B. at North forty five degrees west one hundred and seventy four and

nine tenths feet from post No. 1 of said claim, three hundred feet to a post marked No. 2, U. S. Survey No. 88.

Thence, second course, south thirty three degrees and forty five minutes east seventy nine and three tenths feet intersect south-east boundary line of said Lot No. 76 B at north twenty two degrees and thirty minutes east one hundred and sixty six feet from post No. 1 of said claim, eight hundred feet to a point from which tunnel No. 1 bears south nineteen degrees east thirty five feet distant, and tunnel No. 2 bears south seventy degrees east seventy feet distant one thousand five hundred feet to a post marked No. 3, U. S. Survey No. 88.

Thence, third course, south fifty six degrees and fifteen minutes west three hundred feet to a post marked No. 4 U. S. Survey No. 88, from which a tunnel bears north thirteen degrees west two hundred and thirty one feet distant, six hundred feet to a post marked No. 5 U. S. Survey No. 88, being also post No. 3 of Lot No. 87, hereinbefore described. [1627]

Thence fourth course, north thirty three degrees and forty-five minutes west one thousand five hundred to a post marked No. 6 U. S. Survey No. 88, being also post No. 2 of said Lot No. 87.

Thence, fifth course, north fifty six degrees and fifteen minutes east three hundred feet to post No. 1, the place of beginning; said Lot No. 88 extending one thousand five hundred feet in length along said Takou Gold and Silver vein or lode, and containing exclusive of the conflict with said Lot No. 76 B, twenty acres and twenty hundredths of an acre.

Beginning for the description of Lot No. 89, at a post marked No. 1 U. S. Survey No. 89.

Thence, first course, north fifty six degrees and fifteen minutes east one hundred and fifty feet to a post marked No. 2, U. S. Survey No. 89.

Thence, second course, south thirty three degrees and forty five minutes east one thousand five hundred feet to a post marked No. 3 U. S. Survey No. 89.

Thence, third course, south fifty-six degrees and fifteen minutes west one hundred and fifty feet to a post marked No. 4 U. S. Survey No. 89, three hundred feet to a post marked No. 5, U. S. Survey No. 89, being also post No. 3 of Lot No. 88, hereinbefore described.

Thence, fourth course, north thirty three degrees and forty five minutes west one thousand four hundred and twenty feet and seven tenths feet intersect south east boundary line of said Lot No. 76 B. one thousand five hundred feet to a post marked No. 6 U. S. Survey No. 89; being also post No. 2, of said Lot No. 88.

Thence, fifth course, north fifty six degrees and fifteen minutes east one hundred and eighteen and sixty five hundredths feet intersect south east boundary line of said Lot No. 76 B. at North twenty two degrees and thirty minutes east three hundred and eight and seven tenths feet from post No. 1 of said claim, one hundred and fifty feet to post No. 1, the place of beginning, said Lot No. 89 extending one thousand five hundred feet in length along said Keystone vein or lode and containing, exclusive of the conflict with said Lot No. 76 B ten acres and twenty

two hundredths of an acre. [1628]

Begining for the description of Lot No. 90, at a post marked No. 1 U. S. Survey No. 90.

Thence first course, north fifty six degrees and fifteen minutes east one hundred and fifty feet intersect west side line of Lot No. 91, hereinafter described, at north thirty three degrees and forty five minutes west eight hundred and seventy eight feet from post No. 5 of said claim, two hundred and twelve feet to a post marked No. 2 U. S. Survey No. 90, from which U. S. Mineral Monument No. 2 bears south sixty five degrees and thirty seven minutes east six thousand five hundred and thirty and six tenths feet distant.

Thence, second course, south thirty three degrees and forty five minutes east eight hundred and seventy eight feet intersect south end line of said Lot No. 91, at north fifty six degrees and fifteen minutes east, sixty two feet from post No. 5 of said claim, one thousand one hundred and ten and two tenths feet intersect west side line of Lot No. 92, hereinafter described, at south forty eight degrees and forty two minutes east two hundred and forty and three tenths feet from post No. 6 of said claim, one thousand five hundred feet to a post marked No. 3, U. S. Survey No. 90.

Thence, third course, south fifty six degrees and fifteen minutes west two hundred and twelve feet to a post marked No. 4 U. S. Survey No. 90, three hundred and sixty two feet to a post marked No. 5 U. S. Survey No. 90, being also post No. 3 ~~U. S. Survey~~ of Lot No. 89, hereinbefore described.

Thence fourth course, north thirty three degree and forty five minutes west one thousand five hundred feet to a post marked No. 6, U. S. Survey No. 90, being also post No. 2 of said Lot No. 89.

Thence, fifth course, north fifty six degrees and fifteen minutes east one hundred and fifty feet to a post No. 1, the place of beginning; said Lot No. 90 extending one thousand five hundred feet in length along said Crown Point vein or lode and containing exclusive of the conflict, with said Lots Nos. 91 and 92, eleven acres and six hundredths of an acre.

Beginning for the description of Lot No. 91, at a post marked No. 1 U. S. Survey No. 91. [1629]

Thence, first course, north fifty six degrees and fifteen minutes east three hundred feet to a post marked No. 2, U. S. Survey No. 91.

Thence, second course, south thirty three degrees and forty five minutes east five hundred and ninety feet to post No. 8 of Lot No. 93 hereinafter described, one thousand and forty feet to a post marked No. 3, U. S. Survey No. 91, being also post No. 2 of said Lot No. 92.

Thence, third course, south fifty six degrees and fifteen minutes west three hundred feet to a post marked No. 4, U. S. Survey No. 91, five hundred and thirty eight feet intersect east side line of said Lot No. 90, six hundred feet to a post marked No. 5 U. S. Survey No. 91.

Thence fourth course, north thirty three degrees and forty five minutes west eight hundred and seventy eight feet intersect north end line of said Lot No. 90, one thousand and forty feet to a post marked

No. 6 U. S. Survey No. 91.

Thence fifth course, north fifty six degrees and fifteen minutes east three hundred feet to post No. 1, the place of begining; Said Lot No. 91 extending one thousand and forty feet in length along said Golden Fleece vein or lode, and containing fourteen acres and twenty three hundredths of an acre.

Beginning for the description of Lot No. 92, at a post marked No. 1 U. S. Survey No. 92, from which a tunnel bears south fifty degrees east ten feet distant.

Thence, first course, north fifty six degrees and fifteen minutes east three hundred feet to a post marked No. 2, U. S. Survey No. 92, being also post No. 3 of said Lot No. 91.

Thence second course, south forty eight degrees and forty two minutes east one thousand and fifty feet to post No. 6 of said Lot No. 93 situate on north end line of Lot No. 48, from which post No. 3 of said Lot No. 48 bears south fifty degrees west five hundred and eighty six and five tenths feet distant, one thousand one hundred and sixteen feet to a post marked No. 3, U. S. Survey No. 92.

Thence, third course, south fifty six degrees and fifteen minutes west three hundred feet to a post marked No. 4, U. S. Survey No. 92, six hundred feet to a post marked No. 5 U. S. Survey No. 92, being also post No. 3 of said Lot No. 48. [1630]

Thence, fourth course, north forty eight degrees and forty two minutes west eight hundred and seventy five and seven tenths feet intersect east side line of said Lot No. 90; one thousand one hundred and sixteen feet to a post marked No. 6 U. S. Survey No.

92, being also post No. 5 of said Lot No. 91.

Thence, fifth course, north fifty six degrees and fifteen minutes east sixty two feet intersect east side line of said Lot No. 90, three hundred feet to a post marked No. 1, the place of beginning; said Lot No. 92, extending one thousand one hundred and sixteen feet in length along said Grand Review vein or lode, and containing, exclusive of the conflict with said Lot No. 48, fourteen acres and forty one hundredths of an acre.

Beginning for the description of Lot No. 93, at a post marked No. 1 U. S. Survey No. 93.

Thence, first course, north fifty degrees east three hundred feet to a post marked No. 2, U. S. Survey No. 93.

Thence second course, south thirty three degrees and forty five minutes east four hundred and fifty feet to a post marked No. 3, U. S. Survey No. 93.

Thence, third course, south forty eight degrees and forty two minutes east one thousand and fifty feet to a post marked No. 4, U. S. Survey No. 93.

Thence, fourth course, south fifty degrees west three hundred feet to a post marked No. 5, U. S. Survey No. 93, six hundred feet to a post marked No. 6 U. S. Survey No. 93; situate on east side line of said Lot No. 92.

Thence fifth course, north forty eight degrees and forty two minutes west one thousand and fifty feet to a post marked No. 7, U. S. Survey No. 93; being also post No. 3 of said Lot NO. 91, and post No. 2 of said Lot No. 92.

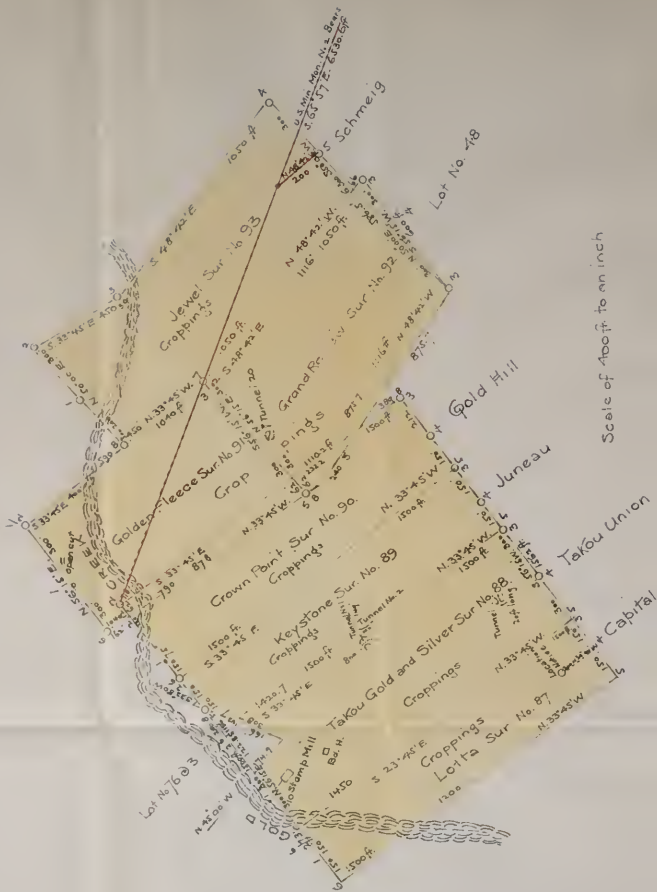
Thence, sixth course, north thirty three degrees

and forty five minutes west four hundred and fifty feet to a post marked No. 8, U. S. Survey No. 93.

Thence, seventh course, north fifty degrees east three hundred feet to post No. 1, the place of beginning; said Lot No. 93 extending one thousand five hundred feet in length along said Jewel vein or lode and containing twenty acres and forty four hundredths of an acre. Expressly excepting and excluding "from these presents all that portion [1631] of the ground, hereinbefore described, embraced in said mining claims or lots Nos. 48 and 76B and also all veins, lodes and ledges throughout their entire depth, the tops or apexes of which lie inside of such excluded ground; the granted premises in said lots Nos. 87, 88, 89, 90, 91, 92 and 93, containing in the aggrate one hundred acres and eighty nine hundredths of an acre of land, more or less, as represented by "Yellow" shading on the following plat: [1632]

M M Var 50° 00' E

T M



NOW KNOW YE. That there is therefore hereby granted by the United States unto the said Samuel Coulter and to his heirs and assigns, the said mining premises hereinbefore described, and not expressly excepted from these presents and all that portion of the said Lotta, Takou Gold and Silver, Keystone, Crown Point, Golden Fleece, Grand Review and Jewel veins; lodes or ledges, and of all other veins, lodes and ledges throughout their entire depth, the tops or apexes of which lie inside of the surface boundary lines of said granted premises in said lots Nos. 87, 88, 89, 90, 91, 92 and 93 extended downward vertically, although such veins, lodes or ledges in their downward course may so far depart from a perpendicular as to extend outside the vertical side lines of said premises; provided, that the right of possession to such outside parts of said veins; lodes or ledges shall be confined to such portions thereof as lies between the vertical planes drawn downward through the end lines of said lots Nos. 87, 88, 89, 90, 91, 92 and 93, so continued in their own direction that such planes will intersect such exterior parts of said veins, lodges or ledges; And provided further, that nothing herein contained shall authorize the grantee herein to enter upon the surface of a claim owned or possessed by another.

TO HAVE AND TO HOLD said mining premises, together with all the rights, priviledges, immunities and appurtenances of whatsoever nature thereunto belonging unto the said grantee above named and to his heirs and assigns forever; Subject nevertheless to to the above mentioned and following stipulations:

First. That the premises hereby granted, with the exception of the surface, may be entered by the proprietor of any other vein, lode or ledge, the top or apex of which lies outside of the boundary of said granted premises, should the same in its dip be found to penetrate, intersect or extend into said premises, for the purpose of extracting and removing the ore from such other vein, lode or ledge.

Second. That the premise hereby granted shall be held subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local laws, customs and decisions of courts. [1634]

Third. That in the absence of necessary legislation by Congress the legislature of Alaska may provide rules for working the mining claims or premises hereby granted, involving easements, drainage, and other necessary means to its complete development.

IN TESTIMONY WHEREOF, I, Benjamin Harrison, President of the United States, have caused the letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington, the fifth day of February, in the year of our Lord one thousand eight hundred and ninety and of the In-

dependence of the United States the one hundred and fourteenth.

By the President:

BENJAMIN HARRISON,

[Seal]

By M. McKEAN,

Secretary.

J. M. TOWNSEND,

Recorder of the General Land Office.

Recorded Vol. 172, Pages 272 to 284, inclusive.

United States of America,

District of Alaska,—ss.

This is to certify that the foregoing is a true, correct and complete copy of the original instrument as the same appears of record in the office of the District Recorder for the Juneau Recording District, District of Alaska, in Book 7 or “K” of Deeds, at page 143, records of said office.

Witness my hand and official seal this 29th day of May, 1911.

[Seal]

G. C. WINN,

U. S. Commissioner and Ex-officio District Recorder,

Juneau Precinct, District of Alaska.

[1635]

[Affidavit of Michael Barrett.]

District of Alaska,

Juneau,—ss.

The within instrument was filed for record 12 o'clock, A. M., Dec. 29, 1900, and duly recorded in book 16 of Lodes on page 2 of the records of said District.

HIRAM H. FOLSOM,

District Recorder.

United States of America,
District of Alaska,—ss.

Michael Barrett, being first duly sworn, deposes and says:

That he, assisted by Harry Hill, Neil McCush and Lee Lamprecht, did at least One Hundred (100) dollars' worth of work upon each of the following named lode claims, during the year 1900.

Said claims being situated in Silver Bow Basin, Harris Mining District, District of Alaska, and being known and designated as, the Idaho Lode Claim, Colorado Lode Claim, Oregon Lode Claim, Wyoming Lode Claim, Nevada Lode Claim, and the Maryland Lode Claim. That said work was done for and at the expense of the Alaska Juneau Gold Mining Company, the owners of said claims for the purpose of holding and developing the same, under the mining laws of the United States.

M. BARRETT.

Subscribed and sworn to before me the 29th day of Dec. 1900.

[Seal]

G. M. ROSE,

Notary Public for Alaska.

United States of America,
District of Alaska,—ss.

This is to certify that the foregoing is a true, correct and complete copy of the original instrument as the same appears of record in the office of the Recorder for the Juneau Recording Precinct in Book 16 of Lodes at page 2.

Witness my hand and seal the ~~day on~~ 17th day of May, 1911.

[Seal]

G. C. WINN,

U. S. Commissioner and ex-officio Recorder. [1637]

[Notice of Location of Takou Lode.]

Notice is hereby given that the undersigned in compliance with the requirements of the Mining Act of Congress approved May the 10th, 1872, have this day located a claim of 1500 feet linear measurement along the course of the lead Lode or Vein of Mineral bearing Quartz and 300 feet on each side of the middle of the lead, lode or vein. Situate on the East side of Gold Creek about one and a half mile up said Creek from its mouth in Harris Mining District, Alaska Territory, and more particularly described as follows, to wit—commencing at this Stake near which this notice is placed, posted; thence running 300 feet northeasterly to a Stake; thence 1500 feet northwesterly to a stake

thence 600 feet southwesterly to a Stake.

thence 1500 feet northwesterly to a Stake.

thence 600 feet southwesterly to a Stake.

thence 1500 feet southeasterly to a Stake.

thence 300 feet to the place of beginning.

R. T. HARRIS.

JOSEPH JUNEAU.

This lode and claim Shall be Known as the Takou Gold and Silver Quartz Lode; Located December 7th, 1880.

The above is a discription of the property recorded in Book A, page 56, and this is a rerecordation for

1786 *Ebner Gold Mining Company vs.*
greater Safety and Notice.

R. T. HARRIS.

JOSEPH JUNEAU.

March 30th, 1881.

R. DIXON,
Recorder.

United States of America,
District of Alaska,—ss.

This is to certify that the foregoing is a true, correct and complete copy of the original instrument as the same appears of record in the office of the District Recorder for the Juneau Recording Precinct in Book 1 of Lodes, at page 118.

Witness my hand and seal this 8th day of June, 1911.

[Seal]

G. C. WINN,

Commissioner and ex-officio District Recorder.

[1638]

[**Affidavit of Mike Barrett.**]

District of Alaska,
Juneau,—ss.

The within instrument was filed for record 2 o'clock P. M., Dec. 30, 1902, and duly recorded in book 16 of Lodes, on page 528 of the records of said District.

H. H. FOLSOM,
District Recorder.

United States of America,
District of Alaska,—ss.

Mike Barrett, being first duly sworn, deposes and says, that during the year 1902, he in conjunction

Alaska-Juneau Gold Mining Company. 1787

with John Mulcahy, Bert Avery, D. F. Cook and John Lehan, performed at least \$900/00 worth of work and labor upon the following named group of claims to-wit:

Summit No. 1, Summit No. 2, Summit No. 3, Summit No. 4, Colorado, Oregon, Wyoming, Nevada and Maryland.

That said work and labor consisted in driving about thirty feet of tunnel as laid out and planned to be driven to cut the lodes on said claim so as to develope and work the whole as one group, the entrance to said tunnel being at a point about six hundred feet above the shore line of the northeast shore of Gastineaux Channel. That said work and labor was done and performed for and at the expense of the Alaska Juneau Gold Mining Co., the owner of said claims and for the purpose of holding and developing the same under the mining laws of the United States.

M. BARRETT.

Subscribed and sworn to before me this 30th day of December, A. D. 1902.

[Seal]

E. F. ROSE,

Notary Public for Alaska.

United States of America,
District of Alaska,—ss.

This is to certify that the foregoing is a true, correct and complete copy of the original instrument as the same appears of record in the office of the Recorder for the Juneau Recording Precinct, in Book 16 of Lodes at page 528.

Witness my hand and official seal, this 17th day of May, 1911.

[Seal]

G. C. WINN,
U. S. Commissioner *and* [1639]

[**Affidavit of Joseph MacDonald.**]

District of Alaska,
Juneau,—ss.

The within instrument was filed for record at 10 o'clock, A. M., Sept. 13, 1904, and duly recorded in book 17 of Lodes on page 412 of the records of said District.

H. H. FOLSOM,
District Recorder.

United States of America,
District of Alaska,—ss.

Joseph McDonald being first duly sworn, on oath, deposes and says: That he is General *Supertindent* of the Alaska-Juneau Gold Mining Co. and was such during the years 1903 and 1904; that he knows of his own knowledge that at least \$100 worth of work was done during each of said years upon each of the following named mining claims, to-wit:

The Idaho, the Colorado, the Oregon, the Wyoming, the Nevada and the Maryland; said claims being situated near the Silver Bow Basin, in Harris Mining District, Alaska; that said work for each of said years was done by and at the expense of the Alaska Juneau Gold Mining Co. owner of said claims for the purpose of holding and developing them.

JOSEPH MacDONALD.

Alaska-Juneau Gold Mining Company. 1789

Subscribed and sworn to before me this 3d day of September, 1904.

[Seal]

J. H. COBB,

Notary Public in and for Alaska.

United States of America,

District of Alaska,—ss.

This is to certify that the foregoing is a true, correct and complete copy of the original instrument as the same appears of record in the office of the Recorder for the Juneau Recording Precinct, in Book 17 of Lodes at page 412.

Witness my hand and official seal this 17th day of May, 1911.

[Seal]

G. C. WINN,

U. S. Commissioner and ex-officio Recorder. [1640]

[Quitclaim Deed Dated August 2, 1910—L. D. Mulligan to Alaska-Juneau Gold Mining Company.]

KNOW ALL MEN BY THESE PRESENTS, That L. D. Mulligan, in consideration of One and no/100 (\$1.00) Dollars, to him paid by the Alaska Juneau Gold Mining Company *do* hereby remise, release and forever QUITCLAIM unto the said Alaska Juneau Gold Mining Company and unto its assigns all my right; title and interest in and to the following described parcel of real estate, situate in the District of Alaska, to-wit:

A certain water right, located August 1, 1910, on Gold Creek near Juneau, Alaska, and described as follows: 20,000 miner's inches, of the waters of Gold Creek, near Juneau, Alaska, to be uses for mining,

milling and other purposes.

Said water to be diverted from said creek at a point indicated by this notice, posted on a tree, and about one *mill* from the mouth of said Gold Creek.

Said water to be diverted by ditch, pipe and flume.

TO HAVE AND TO HOLD the same, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining to the said Alaska Juneau Gold Mining Company and to its assigns forever.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this second day of August, A. D. 1910.

L. D. MULLIGAN. [Seal]

Signed, Sealed, Delivered in the Presence of us as Witnesses:

C. W. RUSSEL.

R. G. DATSON.

United States of America,
District of Alaska,—ss.

This certifies, That on this 2nd day of August, A. D. 1910, before me, the undersigned, a Notary Public in and for the said District; personally appeared the within named L. D. Mulligan known to me to be the identical person described in and who executed the within instrument, and acknowledged to me that he executed the same freely and voluntarily.

IN TESTIMONY WHEREOF, I have hereunto set my hand and Notarial seal the day and year last above written.

[Notary Seal]

JAMES CHRISTOE.

Notary Public, residing at Treadwell.

Alaska-Juneau Gold Mining Company. 1791

Filed for record at 12 M. May 19, 1911. G. C. Winn, Recorder. [1641]

United States of America,
District of Alaska,—ss.

This is to certify that the foregoing is a true, correct and complete copy of the original instrument as the same appears of record in the Office of the District Recorder for the Juneau Recording Precinct in Book 22 of Deeds, at page 558.

Witness my hand and official seal this 20th day of May, 1911.

[Seal] G. C. WINN,
U. S. Commissioner and ex-officio District Recorder. [1642]

Defendant's Exhibit 28—Admitted.

District of Alaska,
Juneau,—ss.

The within instrument was filed for record at 9:40 o'clock, A. M., Nov. 1, 1899, and duly recorded in book 15, Lodes on page 95 of the records of said District.

NORMAN E. MALCOLM,
District Recorder.

NOTICE OF QUARTZ LOCATION.

Notice is hereby given that the undersigned having complied with the mining act of Congress approved May 10th, 1872, and subsequent acts supplemental thereto, and the local customs, Rules and Regulations of Harris Mining District, District of Alaska, has located fifteen hundred linear feet on the

Colorado Lode, together with surface ground three hundred linear feet in width on each side of lode line for working purposes, situate near the head of the Last Chance Basin, Snow Slide Gulch, described as follows, to-wit:

Commencing at this notice and monument, the said monument being identical with cor. No. 3, So. No. 142 Thence N. 84.00 E. 1470 feet more or less to post on west side line of the Royal S. No. 238. Thence S. 33.45 E. 500 feet to Cor. No. 4, S. No. 238.600 feet to post. Thence S. 84.00, W. 1470 feet more or less to post. Thence N. 33.45 W. 600 feet to post identical with Cor. No. 3, S. No. 142 to the place of beginning, containing an area of 20 acres more or less.

Courses expressed from the true meredian magnetic variation 30.00 degrees east of North.

Corner monuments established.

This Claim shall be known as the Colorado Lode Claim.

Locator—ARCHIBALD NEVINS, Jr.

Attest:

GEO. A. HILL.

L. G. HILL.

Located on the ground this 31st day of October, 1899.

United States of America,
District of Alaska,—ss.

This is to certify that the foregoing is a true, correct and complete copy of the original instrument as the same appears of *recods* in the office of the District Recorder for the Juneau Recording Precinct, District of Alaska.

Witness my hand and official seal this 26th day of May, 1911.

[Seal]

G. C. WINN.

U. S. Commissioner and ex-officio Recorder Juneau
Precinct, District of Alaska. [1643]

Defendant's 29—Admitted.

NOTICE OF LOCATION.

Notice is hereby given that the undersigned, having complied with the requirements of Chapter Six Title thirty-two of the Revised Statutes of the United States; and the local customs, laws and regulations, has located 1500 feet on the Oregon Lode, situated in the Harris Mining District, District of Alaska, and described as follows, to-wit:

Beginning at discovery post, thence South 14 degrees west, 100 feet to post #1, center of south end line lying on North side line of Colorado Lode, U. S. S. #612; thence North 84 degrees East 300 feet to post #2; thence North 14 degrees East 1500 feet to post #3; thence South 84 degrees West 6 600 feet to post #4; thence South 14 degrees West 1500 feet to post #5, identical with corner #5 Colorado Lode; thence North 84 degrees East 300 feet to post #1.

Located July 28, 1910.

R. G. DATSON—Locator.

Attest:

F. F. SUMMERS.

I hereby certify that the foregoing is a true and correct copy of the original location notice of the Oregon Claim as recorded in Book 19 of Lodes at

page 557 of the records of the Juneau Recording Office, and that said notice of location was filed for record at 11 A. M. August 8, 1910.

[Seal]

G. C. WINN,
Recorder. [1644]

Defendant's Exhibit 30—Admitted.

KNOW ALL MEN BY THESE PRESENTS, That I, R. G. Datson, in consideration of One and no/100 Dollars, to me paid by the Alaska Juneau Gold Mining Company, do hereby remise, release and forever QUIT CLAIM unto the said Alaska Juneau Gold Mining Company and unto its assigns all my right, title and interest in and to the *the* following described parcel of real estate situate in the District of Alaska, to-wit:

The Oregon Lode, situated in the Harris Mining District, District of Alaska, and described as follows:

Beginning at Discovery Post, thence south 14° W. 100 feet to post No. 1 center of south end line lying on north side line of Colorado Lode, U. S. S. No. 612, thence North 14° east 300' to post No. 2; thence North 14° east 1;500' to Post No. 3; thence south 84° west 600' to Post No. 4, thence South 14° West 1;500' to Post No. 5 identical with Corner No. 5 Colorado Lode; thence North 84° East 300' to post No. 1.

TO HAVE AND TO HOLD the same, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining to the said Alaska Juneau Gold Mining Company and to its assigns forever.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this thirtieth day of July, A. D. 1910.

R. G. DATSON. [Seal]

Signed, Sealed and Delivered in the Presence of us as Witnesses:

J. J. TREMMERS.

JAS. CHRISTOE.

United States of America,
District of Alaska,—ss.

THIS CERTIFIES, That on this 30th day of July, A. D. 1910, before me, the undersigned, a Notary Public in and for said District, personally appeared the within named R. G. Datson known to me to be the identical person described in and who executed the within instrument and acknowledged to me that he executed the same freely and voluntarily.

IN TESTIMONY WHEREOF, I have hereunto set my hand and Notarial Seal the day and year last above written.

[Notary Seal] JAMES CHRISTOE,
Notary Public, Residing at Treadwell, Alaska.

Filed for Record at 12 M. May 19, 1911. G. C. Winn, Recorder. [1645]

United States of America,
District of Alaska,—ss.

This is to certify that the foregoing is a true, correct and complete copy of the original instrument as the same appears of record in the Office of the District Recorder for the Juneau Recording Precinct in Book 22 of Deeds at page 559.

Witness my hand and official seal the 20th day of
May, 1911.

[Seal]

G. C. WINN,
Commissioner and District Recorder. [1646]

**[Notice of Appropriation of Water of Gold Creek by
L. D. Mulligan.]**

KNOW ALL MEN BY THESE PRESENTS:
That I, L. D. Mulligan, of Alaska, a citizen of the
United States, and over the age of twenty-one years,
have appropriated and claimed 20,000 miner's
inches, of the water of Gold Creek, near Juneau,
Alaska, to be used for mining, milling and other pur-
poses.

Said water to be diverted from said creek at a
point indicated by this notice posted on a tree, and
about one mile from the mouth of said Gold Creek.

Said water is to be diverted by ditch, pipe and
flume.

(Signed) L. D. MULLIGAN.

Dated Aug. 1st, 1910.

District of Alaska,
Juneau,—ss.

The Within instrument was filed for record at
11 o'clock A. M. Aug. 8th, 1910, and duly recorded in
book 10 Placers on page 178 of the records of said
District.

(Signed) G. C. WINN,
District Recorder.

United States of America,
District of Alaska,—ss.

This is to certify that the foregoing is a true, cor-
rect and complete copy of the original instrument

as it appears upon the records of the office of the District Recorder for the Juneau Recording District, of Alaska.

Witness my hand and seal this 2nd day of June, 1911.

[Seal]

G. C. WINN,

Commissioner and ex-officio District Recorder.

[1647]

[Notice of Location of Lotta Mine]

LOTTA LODGE.

Notice is hereby given that the undersigned has this 21st day of January 1884 in compliance with the requirements of the Act of Congress, approved May the 10th 1872 located 1500 linear feet of this lead lode or vein of Mineral bearing Quartz running 300 feet in a Southeasterly Course to a Stake at the N. W. End of the Capitol Mine and 1200 feet Northwesterly across Gold Creek to a Stake also Claiming 300 feet in width from the center of the ledge South westerly and running in width to the Takou G. & S. lode parallel with the same Northwesterly to a Stake.

Harris Mining District Alaska Ter.

This location shall be known as the Lotta Mine.

Situated one Mile and half from Juneau.

M. E. DUNN.

pd. May 24th 1884

R. DIXON,

Recorder.

I hereby certify that the foregoing is a correct and true copy of the original location notice as it appears on the records of the Juneau Recording District in Book 2 of Lodes at page 166.

[Seal]

G. C. WINN,

Recorder for Juneau Recording District. [1648]

Defendant's Exhibit 4 for Identification.

OREGON QUARTZ CLAIM.

NOTICE OF QUARTZ LOCATION.

Notice is hereby given that the undersigned, having complied with the Mining Acts of Congress, approved May 10th, 1872, and the subsequent Acts supplemental thereto, and the local customs, rules and regulations of the Harris Mining District, District of Alaska; has located fifteen hundred linear feet on the Oregon Lode, together with surface ground three hundred linear feet in width on each side of the lode line for working purposes, situated near the head of the Last Chance Basin, Gold Creek, described as follows, to wit:

Commencing at this monument and notice said monument being identical with cor. No. 3, S. No. 142 Last Chance, thence N. 17.15 E. 1310 feet to cor. No. 2, S. No. 258—1500 feet to post; thence N. 84.00 E. 150 feet to post intersect the west side line of the Lotta S. No. 87, thence S. 33.45 E. 550 feet to post on west side line of Lotta S. No. 87 thence S. 17.15 W. 970 feet to post on north side line Colorado; thence S. 84.00 W. 600 feet to cor. No. 3 S.—No. 142 to the place of beginning containing an area of 18 acres more or less.

Courses expressed from the true meridian magnetic variation 30.00 degrees East of North.

Corner monuments established.

1800 *Ebner Gold Mining Company vs.*

This claim shall be known as the Oregon Lode Claim.

Locator: J. P. CORBUS.

Attest:

GEO. A. HILL.

L. G. HILL.

Located on the ground this 31st day of October, 1899.

Recorded 9.40 A. M. November 1st, 1899, in Book 15 Lodes on page 94.

NORMAN E. MALCOLM,

Recorder.

This is to certify that the foregoing is a true and correct copy of the original notice as it appears on the records of this office in the book and on the page above mentioned. Said copy prepared by me the Recorder for Harris Recording District, District of Alaska, on September the 7th, 1910.

G. C. WINN,

District Recorder.

Aug. 27, 1910.

Attest: This is a true copy of the certified copy.

W. S. BAYLESS. [1650]

[**Minutes of Meeting of Miners of Harris Mining District.**]

HARRIS MINING DISTRICT.

Feb. 18th 1882.

An adjourned meeting of the miners of this District was held in the house of Wm. Newcomer at 2 O'Clock P. M.

Minutes of the meeting Feb. 8th read and aproved.

Committee appointed at the previous meeting to report amendments to the present code of laws governing water rights & etc. made the following report.

MAJORITY REPORT.

We the undersigned committee appointed by the chairman (Mr. T. A. Wilson) of the annual meeting of the miners of Harris Mining District for the purpose of draughting amendements to the present mining laws of the District to report to an adjourned meeting to be held at the residence of W. H. Newcomer on the 18th February 1882, have the honor to respectfully submit the following for ratification.

Article 1st—Section 1st.

The right to use the running water, flowing in a river or stream or down a cañon or ravine, may be acquired by appropriation.

Article 2nd.

The appropriation must be for some useful or beneficial purpose and when the appropriators or his successors in interest ceases to use it for such a purpose the right ceases.

Article 3rd.

The person entitled to the use may change the place of diversion if others are not injured by such change, and may extend the ditch, flume pipe or aqueduct by which the diversion is made to places beyond that where the first use was made.

Article 4th.

The water appropriated may be turned into the channel of another stream and mingled with its water and then reclaimed but in reclaiming it the water already appropriated by another must not be

diminished. [1651]

Article 5th.

As between appropriators, the one first in time is the one first in right.

Article 6th.

A person desiring to appropriate water must post a notice in writing, in a conspicuous place at the point of intended diversion stating therein.

First he claims the water there flowing to the extent of (giving the number) inches measured under a four inch pressure. (Marginal note—Amended to read six inch pressure instead of four inch pressure.)

Second. The purpose for which he claims it, and the place of intended use.

A copy of the notice, must within ten (10) days after it is posted, be recorded in the Books kept by the recorder of the District.

Article 7th.

Within twenty days during the working season after notice is posted the claimant must commence the excavation or construction of the works in which he intends to divert the water, and must prosecute the work diligently and uninterruptedly to completion, unless temporarily interrupted by rain or snow.

Article 8th.

By completion'' it is meant conducting the waters to the place of intended use.

Article 9th.

By a compliance with the above rules the claimants right to the *use the* water relates back to the time *the time* the notice was posted.

Article 10th.

A failure to comply with such rules deprives the

claimants of the right to the use of the water as against a subsequent claimant who complies therewith.

Article 11th.

Persons who have heretofore claimed the right to water, and who have not constructed works in which to divert it, and who have not diverted nor applied it to some useful purpose, must after this title takes effect, and within twenty days thereafter proceed as in his title provided, or their right ceases. [1652]

Article 1st—Section 2nd.

To have Article 3rd Section 12 to read: All disputes concerning a placer mining ground and Water Rights shall be settled by arbitration during the absence of civil law, and such decision to be final.

Article 2nd.

It shall be the duty of the Recorder of the District to take the books of records and laws upon the ground in dispute, if called upon.

Article 3rd.

All arbitration must be paid by the parties who are the losers of the case in dispute at the rate of Five Dollars per day or any part thereof.

Signed—R. T. HARRIS.

PHILLIP STARR.

WILLIAM HASFORD.

S. LEWIS.

(Marginal note: Art. 3 Amended by adding, “and the Recorder when serving shall receive the same pay as arbitrators.”)

MINORITY REPORT.

1st. All disputes shall be settled by miners meet-

ing or by arbitration.

2nd. Where a party has a prior location to a ditch, he is entitled to protection on said ditch, to prohibit parties from injuring said ditch by dumping tailings.

Signed—P. McGLINCHY.

(Marginal note: Made Art. 12 of Sec. 1 of amendments.)

On motion, the reports of the committee were received.

It was moved that the report of the committee be considered by sections—carried.

The majority report was then taken up.

Section 1st.

Articles First, second, third, fourth, fifth, seventh, eighth, ninth, tenth, and eleventh were adopted as read. Article sixth was amended so as to read “six inch pressure instead of four inch pressure.”

Section 2nd.

Articles First and Second were adopted as read. Article Third was amended by adding. “And the Recorder when serving shall receive the [1653] same pay as Arbitrators.

The minority report was then taken up and the following adopted as Article 12 of Section 1st of the Amendments.

When a party has a prior location to a ditch he is entitled to protection on said ditch, to prohibit parties from injuring said ditch by dumping Tailings.

On motion, the report adopted as a whole as amended.

On motion meeting adjourned.

R. T. HARRIS,
Secretary.

T. A. WILLSON,
Chairman.

United States of America,
District of Alaska,—ss.

This is to certify that the foregoing is a true, correct and complete copy of the record of a Miners Meeting as held on the 18th day of February, 1882, as the same appears of record in the District Recorder's office for the Juneau Recording Precinct in Book entitled "Minute Book, Harris Mining District, August 1881 to Feby. 1888 at pages 38 to 46 inclusive.

Witness my hand and official seal this 7th day of June, 1911.

[Seal] G. C. WINN,
Commissioner and ex-officio District Recorder.
[1654]



MAP
SHOWING
PROPERTY OF ALASKA JUNEAU G.M. CO.
WITH
PROPOSED IMPROVEMENTS



District of Alaska,
Juneau,—ss.

The within instrument was filed for record at 2:40 o'clock P. M., Oct. 18, 1911, and duly recorded in book 19, Lodes, on page 582 of the records of said District.

G. C. WINN,
District Recorder.

Notice of Location [on Canyon Lode by W. R. Lindsay.]

NOTICE IS HEREBY GIVEN that the undersigned, a citizen of the United States, over twenty-one years of age, having complied with the laws of the United States and the local laws, rules and regulations of this district, has located and claims 1500 feet in length and 600 feet in width on this the Canyon Vein or lode of mineral-bearing rock described as follows: Beginning at this notice which is situated on the left bank of Gold Creek about fifty feet up the stream from the lower Alaska-Juneau dam and about 400 feet down the stream from the lower Ebner mill in Harris Mining District, Alaska, and running 900 feet northwesterly and 600 feet southeasterly therefrom with 300 feet on each side of the center line so described. This claim is bounded on its northeasterly side by the Lotta lode mining claim U. S. Lot No. 87.

Located this eighth day of October, A. D. 1910.

W. R. LINDSAY, Locator.

ARTHUR KUNNAS, Witness.

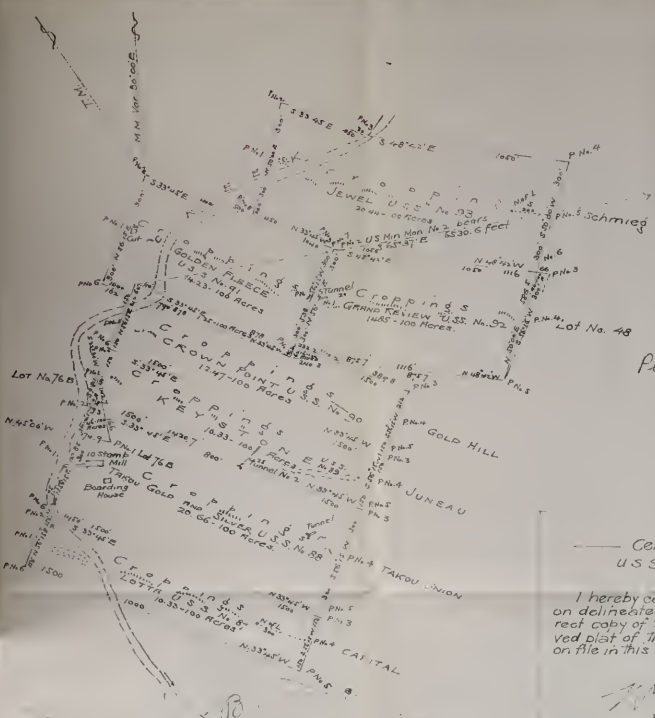
United States of America,
District of Alaska,—ss.

This is to certify that the foregoing is a true, correct and complete copy of the original instrument as the same appears of record in the office of the District Recorder for the Juneau Recording District, District.

Witness my hand and official seal this 2nd day of June, 1911.

[Seal]

G. C. WINN,
Commissioner and ex-officio Recorder. [1656]



Page B 835

Certificate
U.S. Surveyor General's Office
Juneau, Alaska,
May 23, 1911.

I hereby certify that the map here-
on delineated is a full, true and cor-
rect copy of the original and appro-
ved plat of the survey of said tract
on file in this office

Wm. V. Liston
U.S. Surveyor General for Alaska

Scale
400 ft. to the inch

[**Plaintiff's Exhibit "AA."**]

Ebner Gold Mng. Co. v. Alaska-Juneau Gld. Mng.
Co.—835-A.

(Pltffs. Exhibit "AA," being part of Stock Book
of the Ebner Gold Mng. Co.)

No. 1—Certificate

For 5000 Shares

Issued to

Wm. M. Ebner.

Dated February 1, 1896.

Transferred from

Dated _____, 18____.

No. Original Certificate	No. Original Shares	No. of Shares Transferred
-----------------------------	------------------------	------------------------------

Received this Certificate

(All these stubs are alike with the exception of
the number of certificate; number of shares; to
whom issued; and date, which are as follows:)

1 to 10 are same as above, being to Ebner for 5000
each, same date as above.)

No. 11—1000 shares—same party—same date.

12 to 30 both inc., same as 11.

No. 31 to 45 both inclusive 500 shares each; same
party; same date.

No. 46 to 57 both inclusive, 250 shares each; same
party; same date.

No. 58 150 shares; same party; same date.

No. 59 to 64 both inclusive; 100 shares; same party;
same date.

No. 65 to 76 both inclusive; 1000 shares each; issued
to B. M. Behrends; dated February 1, 1896.

No. 77 & 78 250 shares each; same party; same date.

No. 79 to 90 both inclusive; 500 shares each; issued to C. W. Young; same date; After the words Received this certificate—C. W. Young.

No. 91 same party, 250 shares; balance same.

No. 92—Gus Anderson, same date; Transferred from Wm. M. Ebner; 100 shares; Under head of number certificate and shares—64-100-100; signed by Gus Anderson;

No. 93, 150 shares; Percy F. Smith; same date; transferred from Wm. M. Ebner; 58-150-150.

No. 94—Ebenezer Gay, 169 Beacon Street, Boston, Mass.; Dated March 9, 1896; from Ebner; 57-250-250; dated February 27, 96.

No. 95, 100 shares; Maude J. Wilson; dated March 16, 1896; from Ebner; dated Feby 26, 1896, 63-100-100.

No. 96—500 shares; Alfred H. Fowler; dated June 3, 1896; from Ebner; dated April 1, 1896—30-1000-500;

No. 97—100 shares; same party; balance same—30-1000-100.

No. 98 & 99 same as 97.

No. 100, to Cora L. Pickering; balance same.

No. 101—Martha P. Flower; balance same.

No. 102—1000 shares; E. L. Wires; dated July 9, 1896; from Ebner; April 18, 96—24-1000-1000.

No. 103 same—25-1000-1000.

No. 104, 100 shares A. E. Scott, balance same, 60-100-100. [1658]

105—same 61-100-100.

106, 1000 shares, balance same 27-1000-1000.

Alaska-Juneau Gold Mining Company. 1813

- 107, 500 shares; Cecilia G. Scott; balance same, 45-500-500.
- 108—2000 shares; George O. Whiting balance same, 22 & 23-2000-2000.
- 109, 1133 shares, Louisa K. Wilson (void); dated July 9, 1896; from Ebner, same date.
- No. 110, 1133 shares, Louisa K. Wilson Care Wm. Power Wilson, 53 State St. Boston, Mass. balance same, 26 & 46-1250-1133. Signed Louisa K. Wilson, by Wm. Power Wilson.
- 111—117 shares, to Wm. M. Ebner balance same, 46-250-117.
- 112, 1600 shares—Wm. Power Wilson; dated Aug. 24, 1896; from Ebner; dated April 17, 1896; 21 & 31 & 62-1600-1600.
- 113, 200 shares; E. W. Dixon, Brewster, New York; dated Aug. 24, 1896; from (blank) 56-250-200.
- 114—100 shares, to A. D. Shea, No. 2 Mt. Warren, Roxbury, Mass. Aug. 24, 96—from Ebner, same date, 56 & 111-367-100.
- 115—67 shares—to Ebner; balance same, 111-117-67.
- 116—5600 shares, to William Power Wilson; Dec. 14, 96; from Ebner, same date, 10-44-59-5600-5600.
- 117—1563 shares—Louisa K. Wilson—Jany 19, 1898; from Ebner, no date—28-41-42-2000-1563.
- 118—1562; Wm. R. Richards, 31 State St. Boston, Mass. January 98; from Ebner, Jany 19, 98; 29-43-42-2000-1562.
- 119, 1612; Wm. Power Wilson; January 19, 98; from Ebner and A. D. Shea, Nov. 3, 1898; 114-32-33-1850-1612.

1814 *Ebner Gold Mining Company vs.*

120 113 shares to Ebner/ Jany 19, 98; from Ebner, no
date—50—250113.

121—8812, W. Power Wilson; May 7, 1908; balance
blank.

First certificate.

Incorporated under the laws of the State of Oregon
December 3rd, 1895.

No. 10	Ebner Gold Mining Company	Shares
	of Juneau, Alaska.	5000

Office and principal	Mines and mills two miles
place of business.	from Juneau.

Full-paid and non-assessable.

This certifies that Wm. M. Ebner is the owner of
Five Thousand Shaes of the capital stock of Ebner
Gold Mining Company transferable only on the
Books of the Cprporation in person or by Attorney
on surrender of this certificate properly endorsed.

In Witness Whereof the President and Secretary
have hereunto subscribed their names and caused its
Corporate seal to be hereto affixed at Juneau, this
first day of February, A. D. 1896.

WM. M. EBNER,
President.

B. M. BEHRENDTS,

Secretary.

Ebner Gold Mining Co.

Juneau.

Alaska.

Lowman & Hanford Litho, Seattle, [1659]

Endorsed: For Value Received I hereby sell trans-
fer and assign to Wm. Power Wilson of Boston, Mass.
the shares of stock within mentioned and authorize

B. M. Behrends, Secty to make the necessary transfer on the books of the Company.

Witness my hand and seal this 14th day of December, 1896.

WM. M. EBNER.

Witnessed by

A. S. LOVETT.

Next—21.

- Endorsed to Wm. Power Wilson of 53 State St
Boston, Mass. Carleton Hunneman
- 22 To George O Whiting of Lexington Mass 18
April 96 A E Scott
- 23 same.
- 24 to E L Wires of Milford, Mass balance same
- 25 same as 24
- 26 to Louisa K Wilson of Boston Mass 9th day of
July no witness
- 27 to A E Scott of Lexington, Mass 18th day of
April 96 E L Wires
- 28 Louise K Wilson 19th Jany 98 no witness
- 29 Wm R Richards same date
- 30 Alfred H. Flower of 10 Holyoke St Bston, Mass
first Apl 96 William H Sellers
- 31 Wm Power Wilson of 53 State St Boston, Mass
17th Apl 96 Carleton Hunneman
- 32 signed by Ebner only
- 33 Wm Power Wilson 19th day of Jany 98
- 41 Louise K Wilson 19th Jany 98
- 42 Louise K Wilson and Wm R Richards 19th of
Jany 98

- 1816 *Ebner Gold Mining Company vs.*
- 43 Wm Power Wilson—same
- 44 “ of Boston Mass 14th Dec 96
A S Lovett
- 45 Cecilia G Scott of Lexington, Mass 18th Apl 96
- 46 Louise K Wilson of Lexington Mass 133 shares
balance 117 shares to Wm M Ebner; 18th Apl 96
- 50 Part to Wm Power Wilson and 113 shares back
to myself 19th day of Jany 98
- 56—E W Dixon 200 shares and A D Shea 50 shares;
24th Aug 96
- 57 Ebenezer Gay of 169 Beacon St Boston, Mass
27th Feby 96 Ferdinand Schmitz
- 58 Percy F Smith 1st Feby 96 W H Pyott
- 59 Wm Power Wilson of Boston, Mass 14th of Dec
1896 A S Lovett
- 60 A E Scott of Lexington, Mass 18 Apl 96
- 61 same
- 62 Wm Power Wilson of 53 State St Boston, Mass
17 Apl 96 Carleton Hunneman
- 63 Maude J Wilson 26 Feby 896 Stella Mae Groce
Gus Anderson, 64—1st Feby 96 Percy F Smith
- 109 no endorsement
- 111 A D Shea 50 shares Wm M Ebner 67 shares 24
Aug 96
- 114 Wm M Ebner 50 shares and to Wm Power Wil-
son fifty of 3rd Nov 97 Chas F Gray [1660]

[Plaintiff's Exhibit "BB."]

Ebner Gold Mng. Co. v. Alaska-Juneau Gld. Mng.
Co.—835—A.

Pltffs. Exhibit "BB."

By-Laws of the Ebner Gold Mining Company.

Article I.

Officers.

Section 1. The general officers of said Corporation shall be a President, Vice-President, Secretary and Treasurer; provided, however, the office of Secretary and Treasurer may be held by one and the same person; all of which said officers shall be elected by the Directors.

The stock, property, affairs and business of said corporation shall be under the care of and managed by a Board of three (3) Directors, who shall be elected annually by the stockholders from among their number, and shall hold their office one year, and until their respective successors are chosen and qualified, provided, always that the Board of Directors may appoint such other officers and agents as they deem necessary for the transaction of the business of the Corporation, to fix, limit and determine their duties and powers, and at their pleasure dismiss them or any of them.

Section 2. The principal duties of the several general officers respectively shall be as follows:—

The President shall preside at all meetings of the stockholders and of the Board of Directors; he shall sign all certificates of stock, subject to the direction of the Board of Directors; and shall sign all notes, obligations, contracts and other instruments, re-

quired to be made or executed for or on behalf of the Company, and shall exercise a general supervision over the entire stock, property, affairs and business of said Corporation and generally perform all duties usually incumbent upon such officer and do and perform all such duties as may be required of him by the Board of Directors.

Section 3. The Vice-President shall exercise all the powers and discharge all the duties of the President, in case of his absence or inability to act, and all such duties as may be required of him by the Board of Directors.

Section 4. The Secretary shall attend all meetings of the Stockholders and of the Board of Directors, both regular and [1661] special, and shall keep a fair and true record of the proceedings of all such meetings; he shall sign all certificates of stock and keep a record of the issuance and transfer of the same, when such transfers are properly reported to him he shall enter in the stock book all transfers of stock so as to show the name and place of residence of the parties by and to whom transferred, the number and designation of shares, and the date of transfer; he shall be the custodian of the Corporate Seal, subject to the Board of Directors; he shall attach the Corporate Seal to all documents which require sealing and which have been executed by the President, or other duly authorized officer, and shall have charge of all books, documents and papers which properly belong to his office, and generally perform all duties usually incumbent upon such office and do and perform all such duties as may be required of

him by the Board of Directors.

Section 5. The Treasurer, subject to the Board of Directors, shall safely keep the funds of the Corporation, which shall come to his hands and so only disburse the same, and generally perform all duties usually incumbent upon such office, and all such duties as may be required of him by the Board of Directors.

Article II.

Stockholders.

Stockholders only shall be members of this Corporation, and every stockholders shall be entitled, at every meeting of stockholders, to one vote for each share of stock held and owned by him, and may vote either in person or in proxy.

Article III.

Annual Meeting.

The annual meeting of the stockholders shall be held at the office of the Company, in the City of Juneau, District of Alaska, on the first Tuesday of November in each year, for the election of three (3) Directors, and the transaction of such other business as may properly come before the meeting. Special [1662] meeting of the stockholders may be held at the office of the Company in the City of Juneau, District of Alaska, at such time and for such purpose as the Board of Directors, or a majority of the stockholders may from time to time designate.

Article IV.

Notice of Annual Meeting.

Notice of the time and place and object of holding all stockholders' meetings shall be given by sixty

days' personal notice thereof, in writing to each stockholder as his address appears upon the books of the corporation, expressly provided, however, that any and all of such notices, may be dispensed with if all of the Stockholders are present at such meeting, either in person or by duly authorized proxy, and shall consent for such meeting upon the records of the Corporation.

Article V.

Quorum.

The members owning (?) a majority of the stock of this Corporation shall constitute a quorum at any and all meetings of the Stockholders, and shall be capable of transacting any business thereof.

Article VI.

Directors Notice.

The annual meeting of the Directors shall be held as soon as may be after their election in each year, at the office of the Company, in the City of Juneau, District of Alaska.

Article VII.

Quorum.

A majority of the Directors shall constitute a quorum for the transaction of business, at any business meeting of the Board, convened according to the By-Laws.

Article VIII.

Meeting of Directors.

The President, or majority of the Directors may at any time call a meeting of the Directors by written notice of the time and place of such meeting given to each Director, and such notice may be given in person or by mail, at least three days prior to the time

of such meeting, provided, such notice may be dispensed with if all the Directors are present at such meeting. [1663]

Article IX.

Certificates of Stock.

The Certificates of stock of this Corporation shall be signed by the President and Secretary and sealed with the Corporate Seal.

Article X.

Transfer of Stock.

Shares of the Capital Stock of this Company, after certificates have been issued, may be transferred in the manner provided by the Laws of the State of Oregon.

Article XI.

Execution of Contract.

All deeds and written contract made by this Corporation shall be executed in the name of this Corporation, by the President and Secretary, and when required by law be under Seal; the Secretary shall affix the Corporate Seal, provided always the Board of Directors may by resolution appoint any office of this Corporation to execute such instrument in the name of said Corporation and in its behalf.

Article XII.

By-Laws.

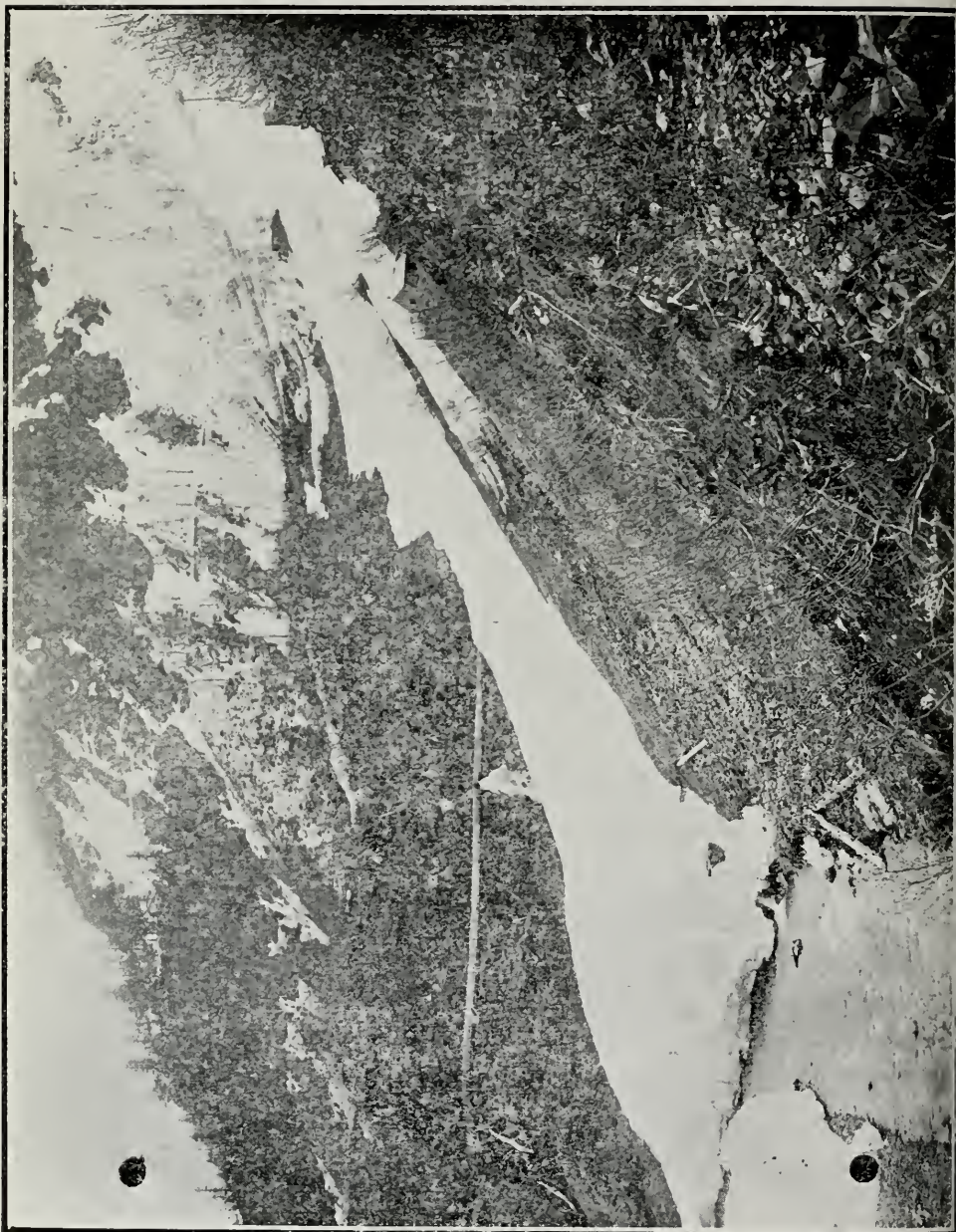
These By-Laws, may be altered, amended or repealed (?) at any annual meeting of the stockholders, or at any meeting of the stockholders especially called for that purpose.

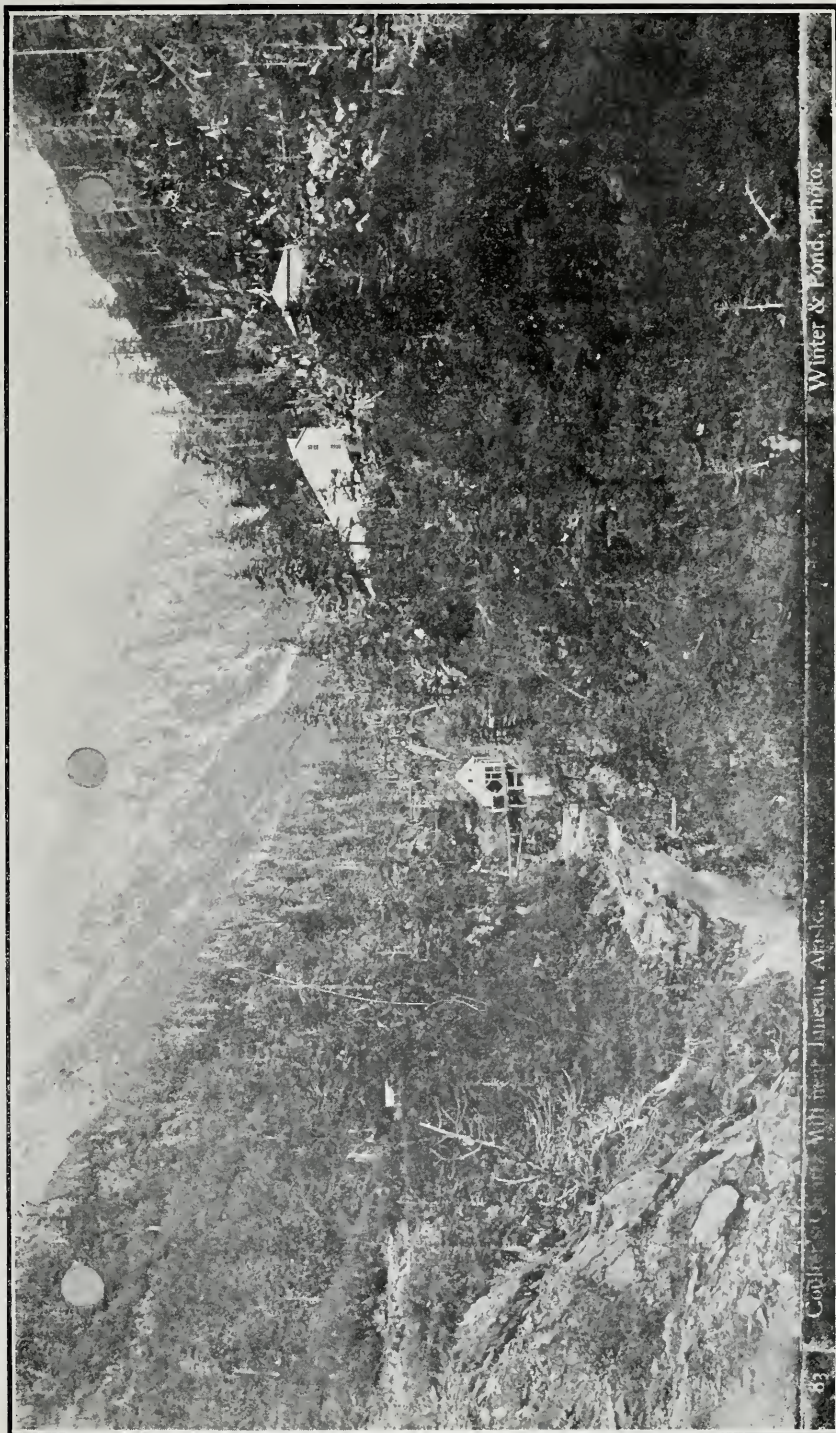
WM. M. EBNER.

B. M. BEHREND.

C. W. YOUNG. [1664]

[Plaintiff's Exhibit "EE"—Admitted.]

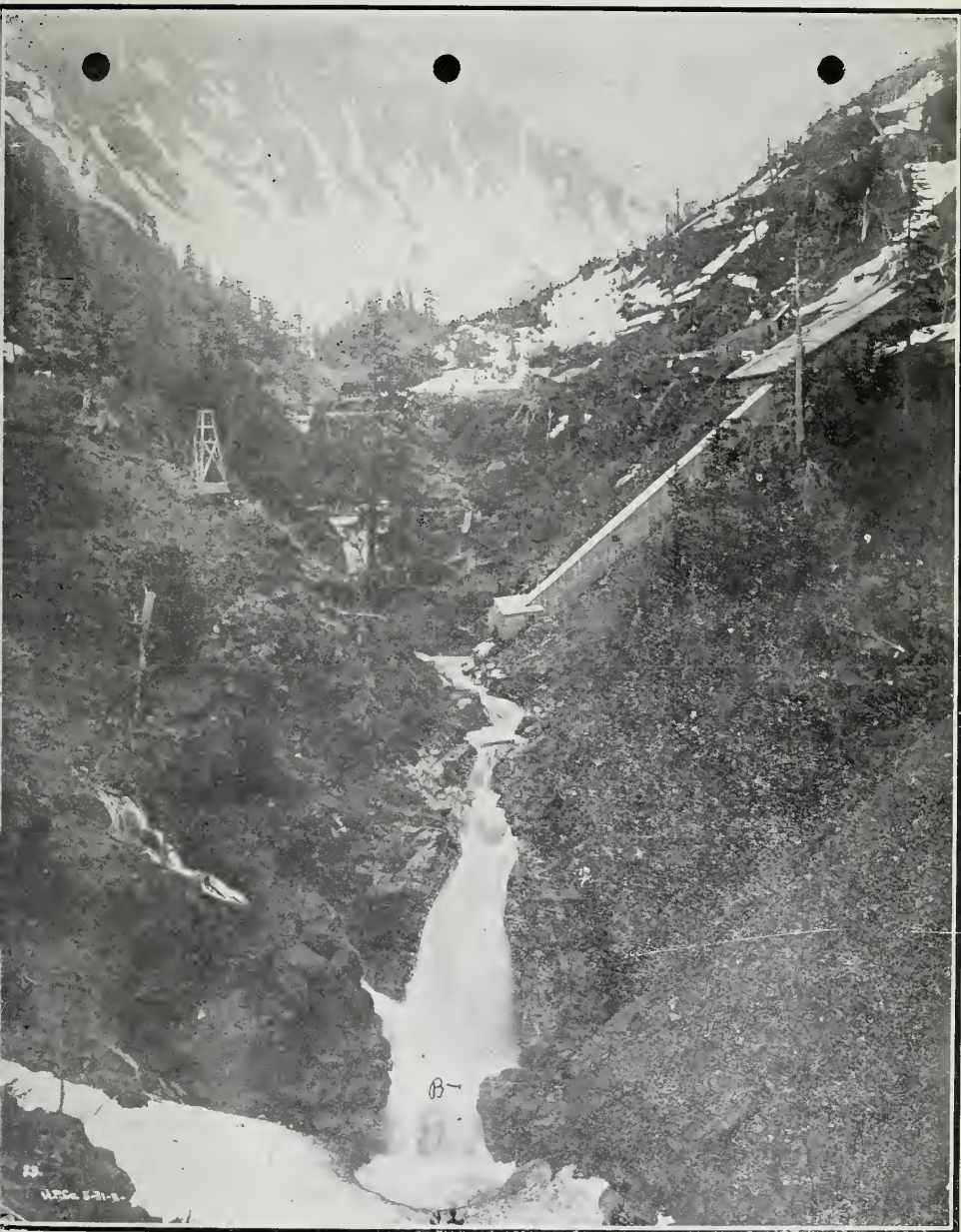




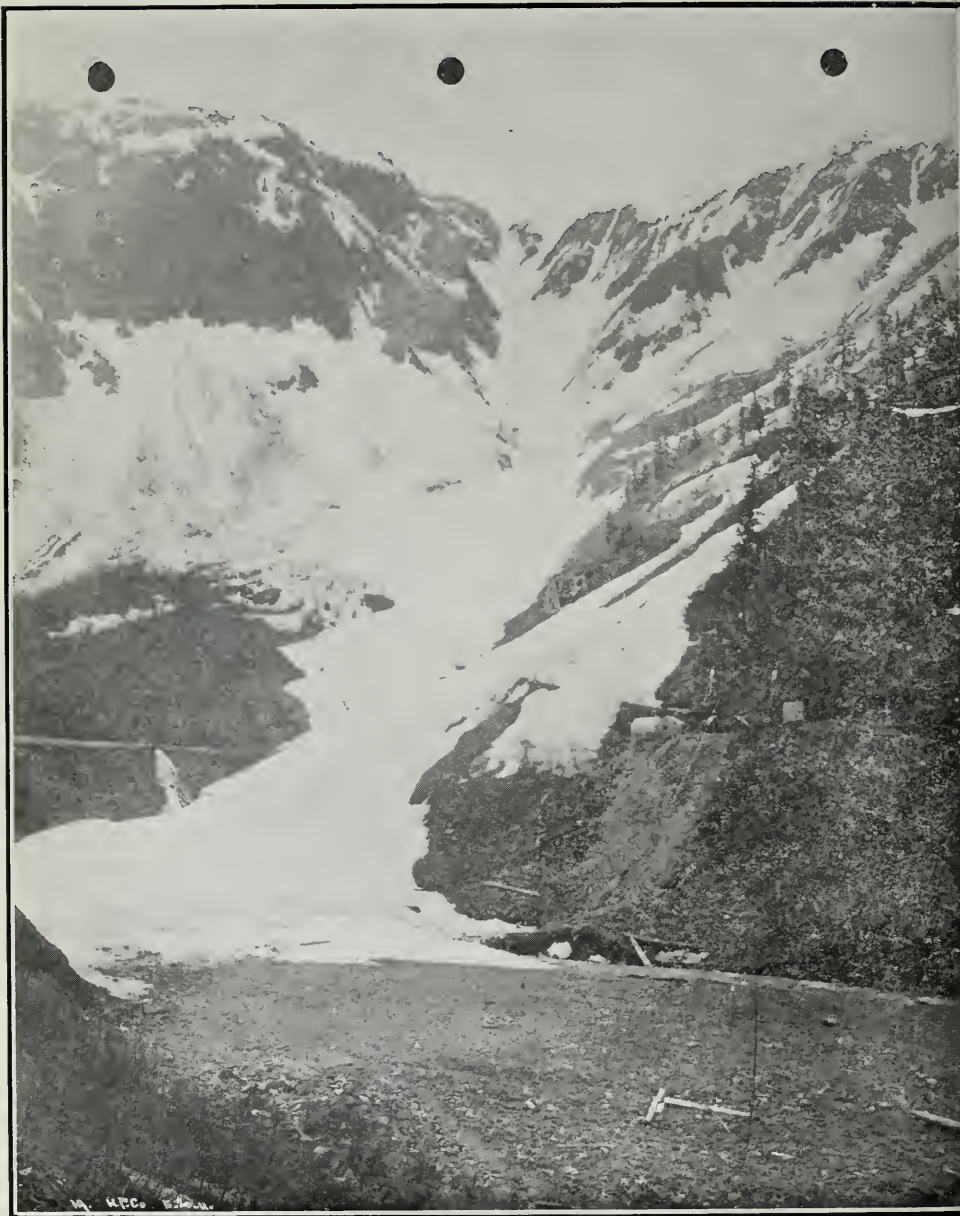
Winter & Pond, Photo.

Cooper's Canyon, with peak Juneau, Alaska.





[Plaintiff's Exhibit "FF"—Admitted.]





[Plaintiff's Exhibit "HH"—Admitted.]

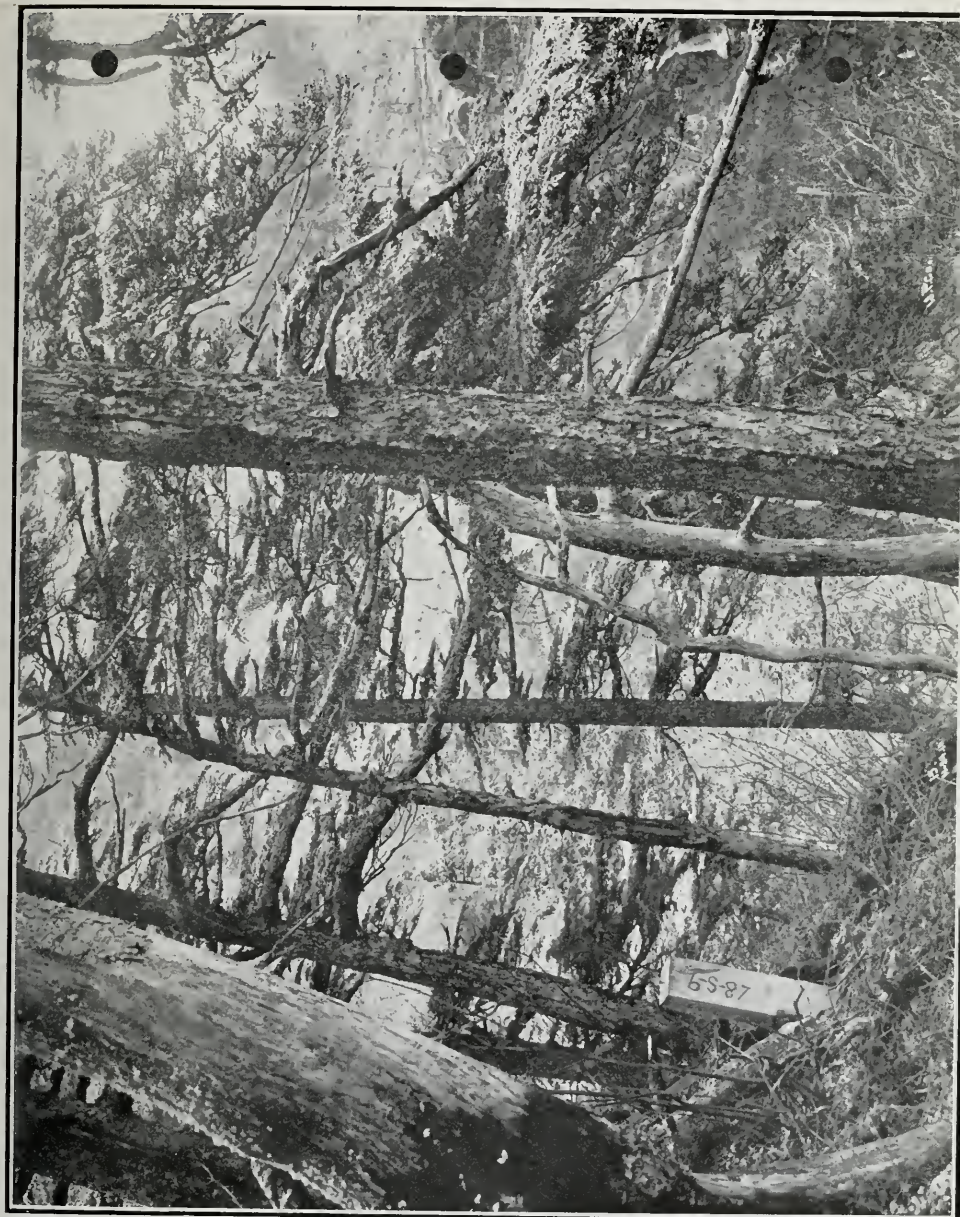


Alaska-Juneau Gold Mining Company. 1829

[Plaintiff's Exhibit "GG"—Admitted.]



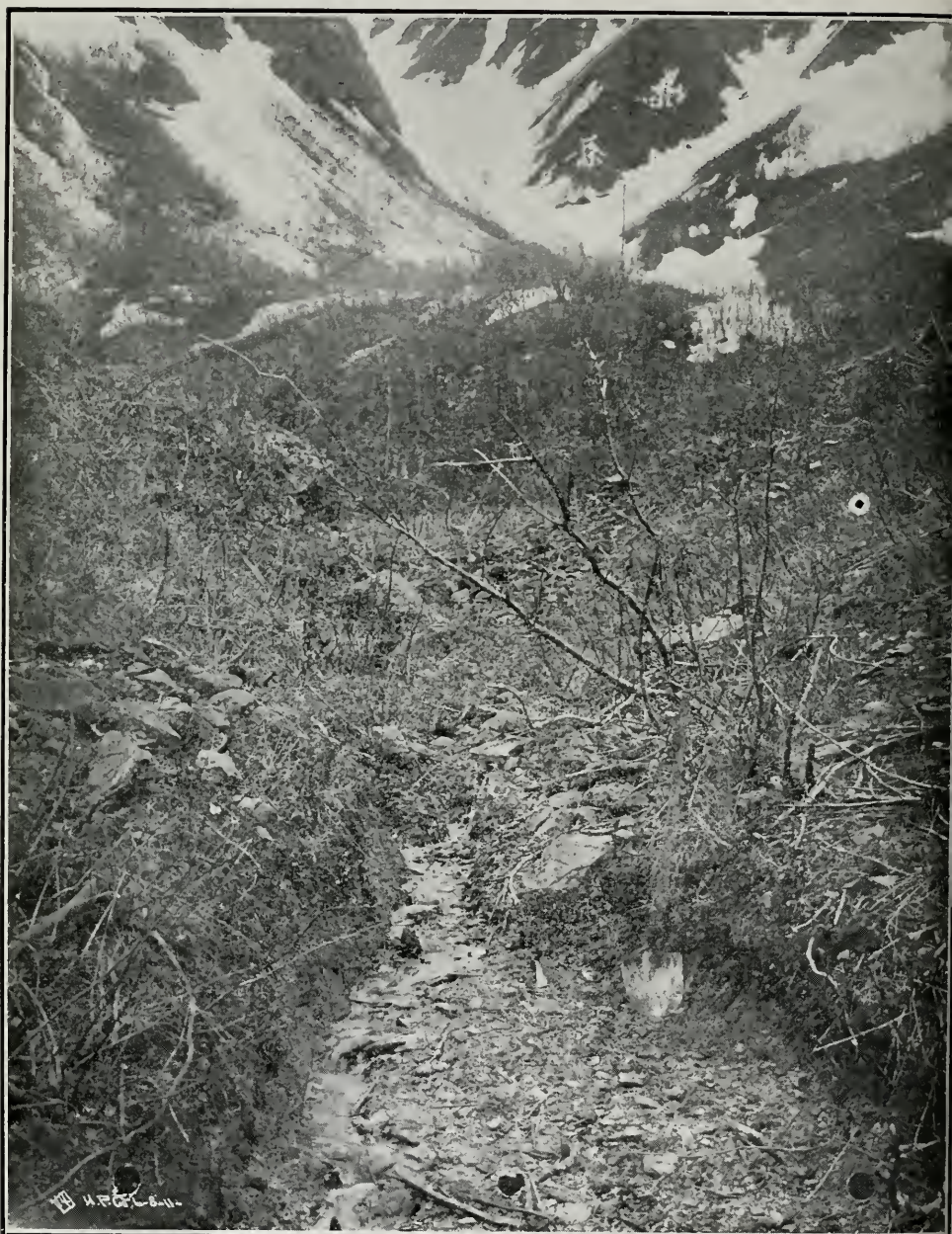




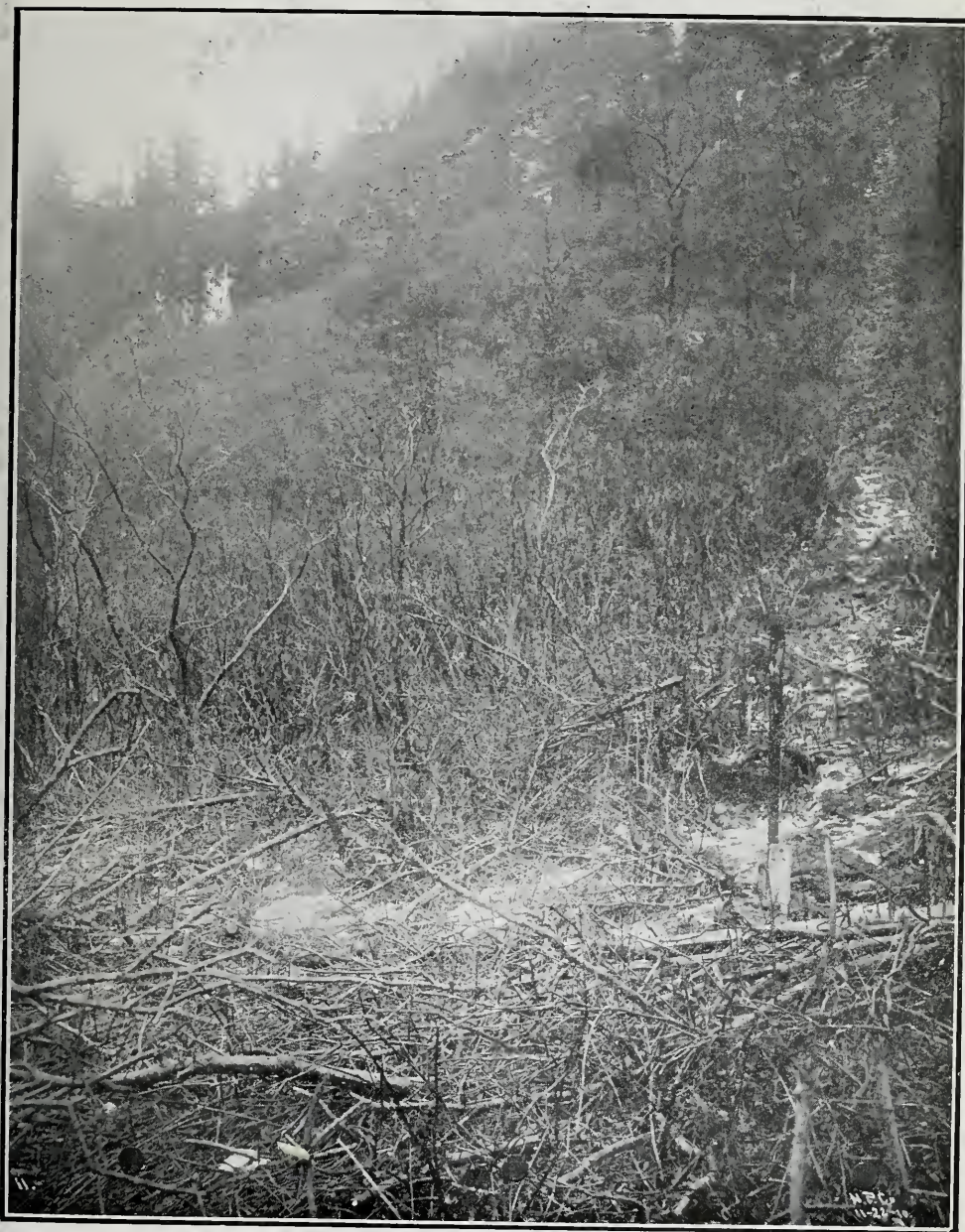
[1674]

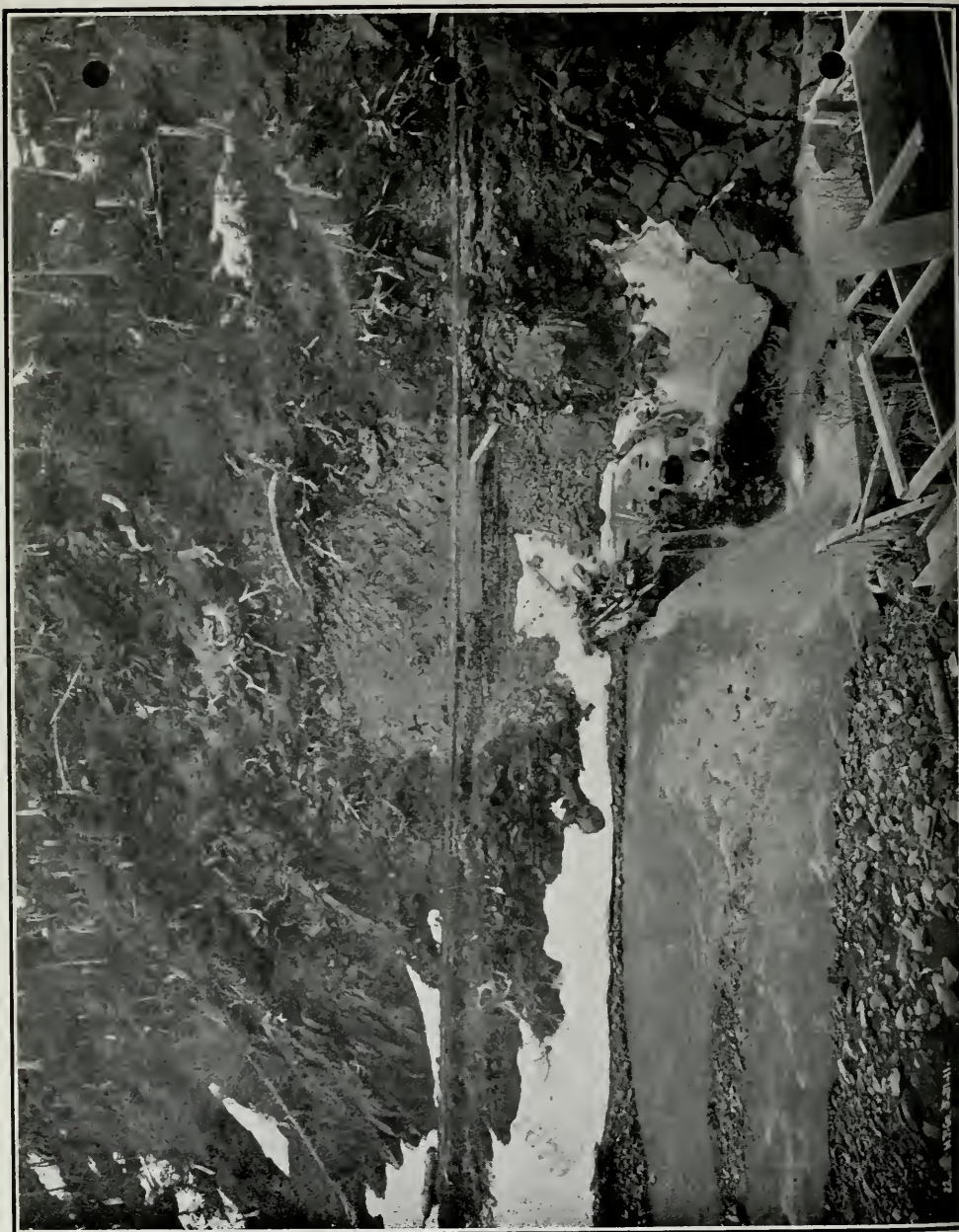


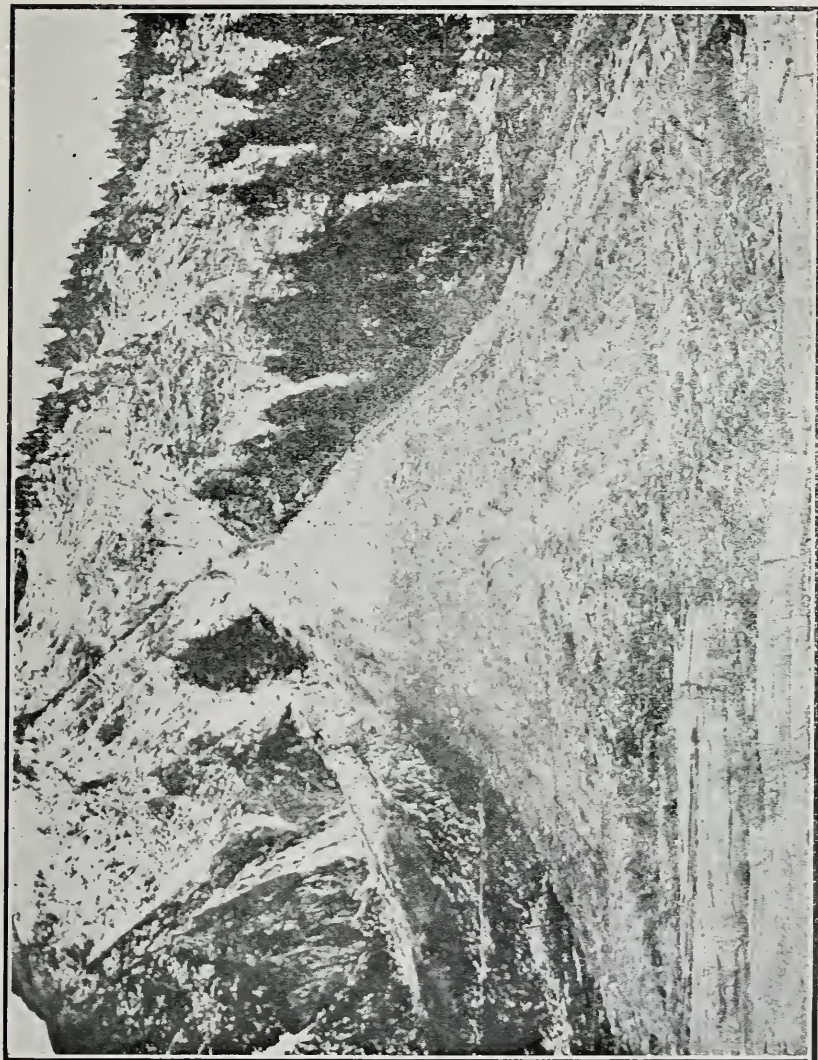




[Plaintiff's Exhibit "H" For Identification.]







Rock Slide of 1901, Last Chance Basin, Gold Creek.















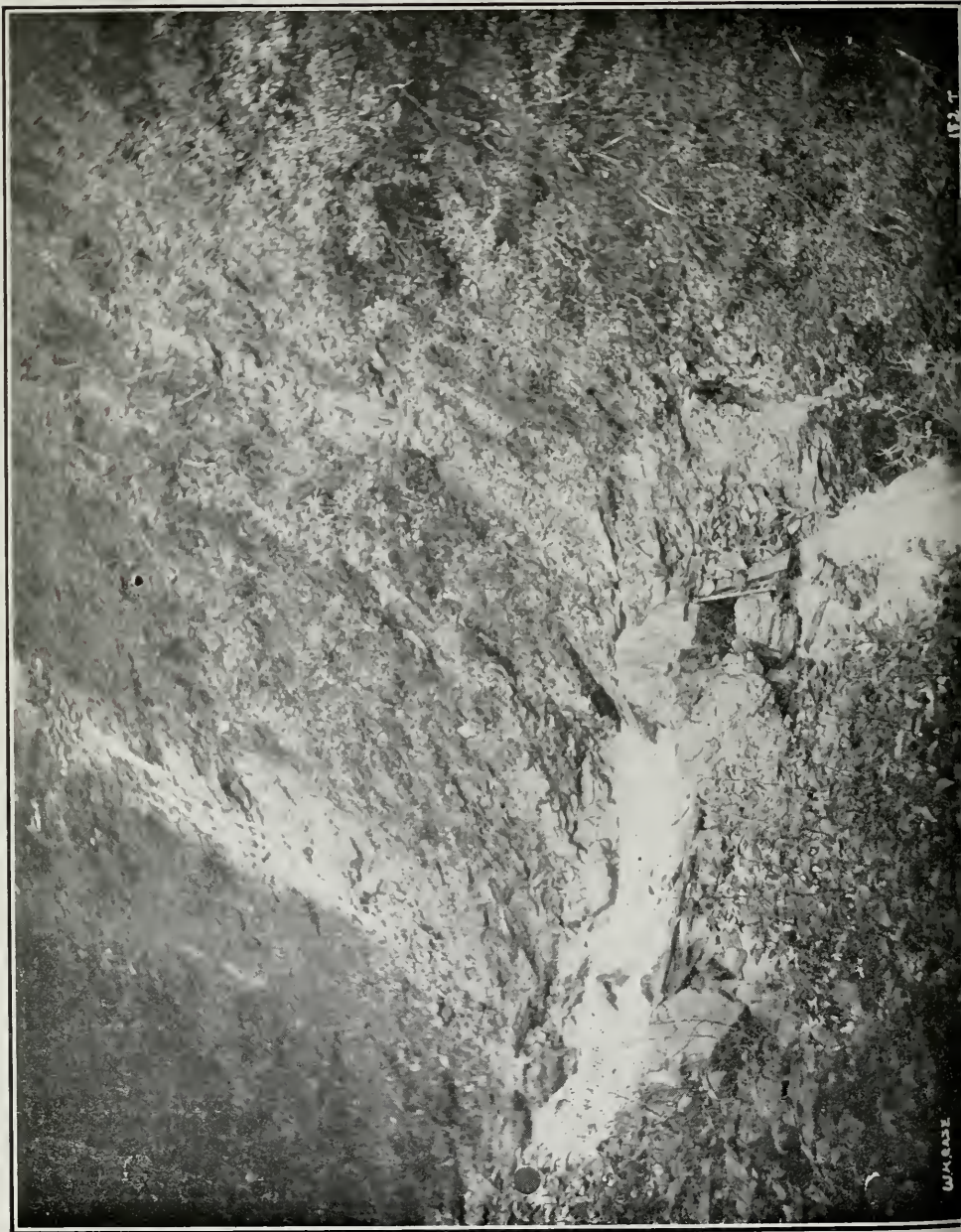
Alaska-Juneau Gold Mining Company. 1845

U. S. Geological Survey

Bulletin No. 287 Pl. x



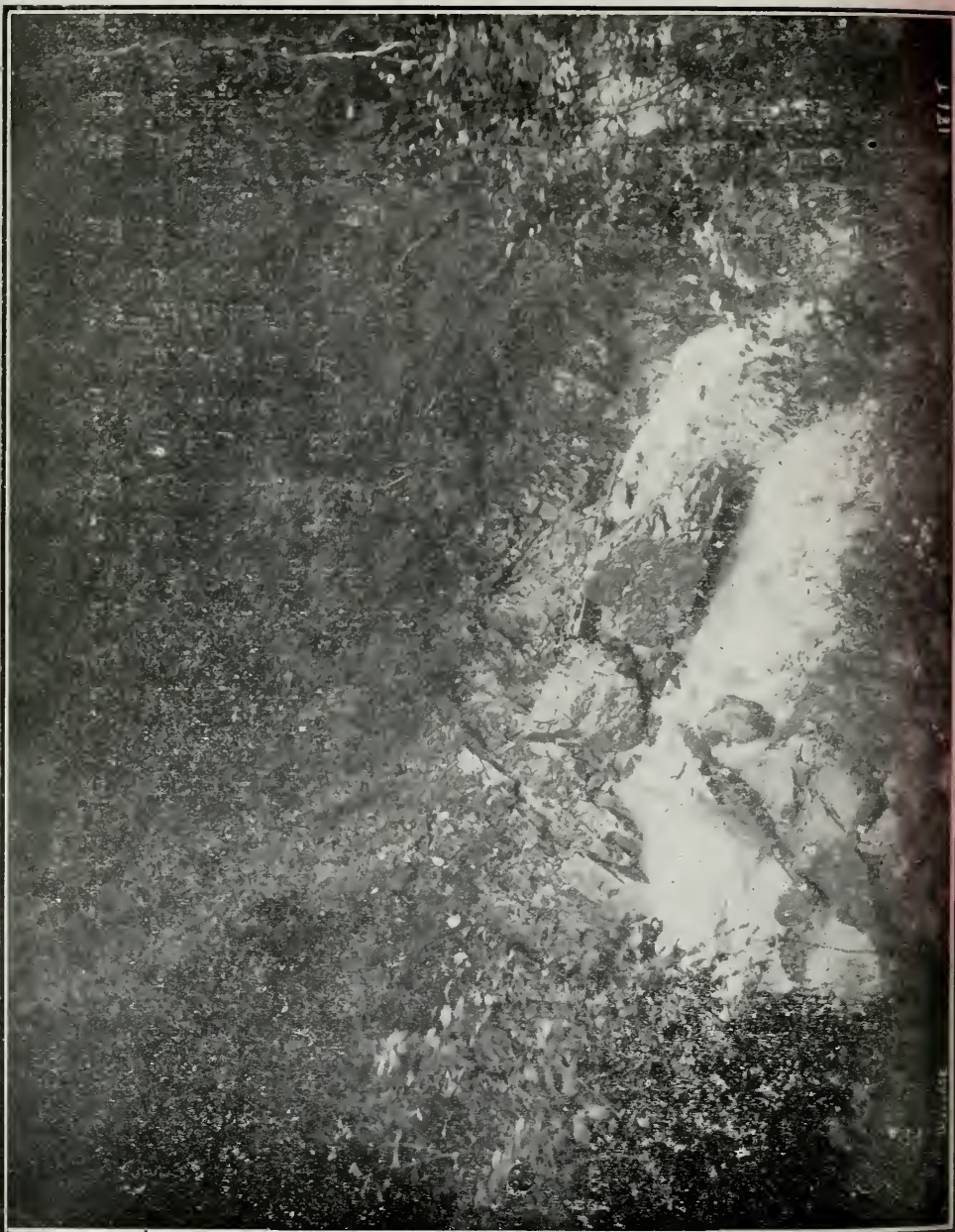
Cascade Above Last Chance Basin, Gold Creek.
Showing Ebner Stamp Mill, Power House, and Waste Dump.



[Defendant's Exhibit No. 15 for Identification—
Admitted.]



[Defendant's **Exhibit 14** for Identification—
Admitted.]



3 40 11 50

The original letter was placed in a sheet
of cardboard cut the size indicated by some
marks.

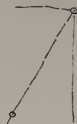
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Defl's Ex 26

(3)



(5)

BLUFF LODE.
SUR N° 545
(1900)

HUMBOLDT LODE.
SUR N° 76 A
(1888)

MILLSITE LODE
SUR N° 383
(1888)

ETTA LODE
SUR N° 545
(1900)

ROPEWAY
SUR N° 545
(1900)

FORREST LODE
SUR N° 545
(1900)

KEYSTONE LODE
SUR N° 83
(1888)

TAKU LODE
SUR N° 88
(1888)

LOTTA LODE
SUR N° 87
(1888)

ALASKA JUYEAU CAMPBELL'S
DAM AND INTAKE

GOLDEN FLEECE LODE
SUR N° 81
(1888)

CROWN
LODE
SUR N° 90
(1888)

SUR N° 141
(1888)

*Bluff is
in the
claim*

MAP OF

EBNER PATENTED MINING CLAIMS

SHOWING SURVEYS

87-88-89-90-91-238-239-237-545-641.

ALSO ACTUAL POSITION OF IDENTIFIED CORNERS
AS SURVEYED DEC 1910

Scale Inch = 200 Feet

S 63° 10' E
560.77 E
S 65° 48' E
567.07 E
6805.73 F
6330.60 F
6864.30 F
6382.10 F

S 71° 00' E
571.24 E
6888.80 F
7006.80 F

S 75° 28' E
576.48 E
7322.10 F
7331.90 F

S 80° 30' E
580.18 E
7104.40 F
7248.40 F

APEN LODE
SUR N° 82
(1888)

HOUSE
S 80° 30' E
580.18 E
7104.40 F
7248.40 F

TUNNEL
SUR N° 82
(1888)

HORN LODE

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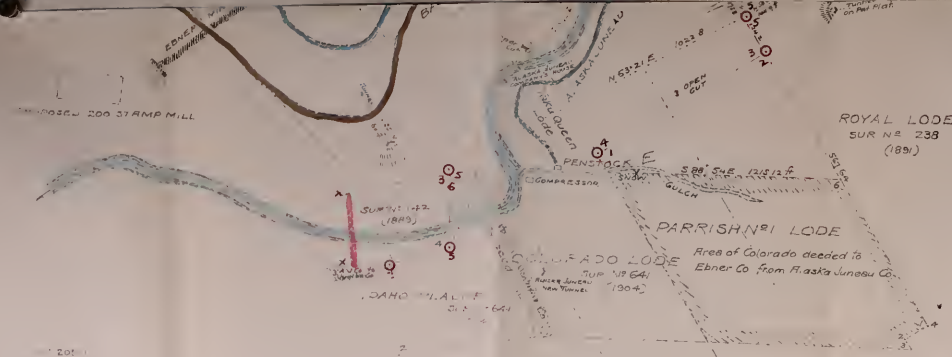
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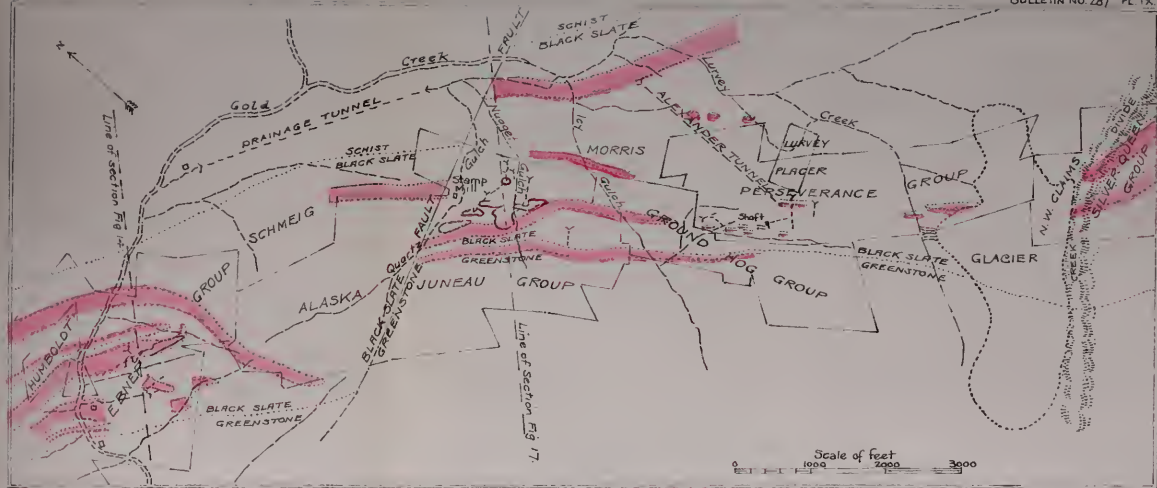
ENTERPRISE LODE
SUR. N° 239
(1891)

ROYAL LODE
SUR N° 238
(1891)

PARRISH LODE

Area of Colorado deeded to
Ebner Co. from Alaska Juneau Co.

S 83° 22' E.
S 83° 01' E.
6/20. 90 f
620 80 f

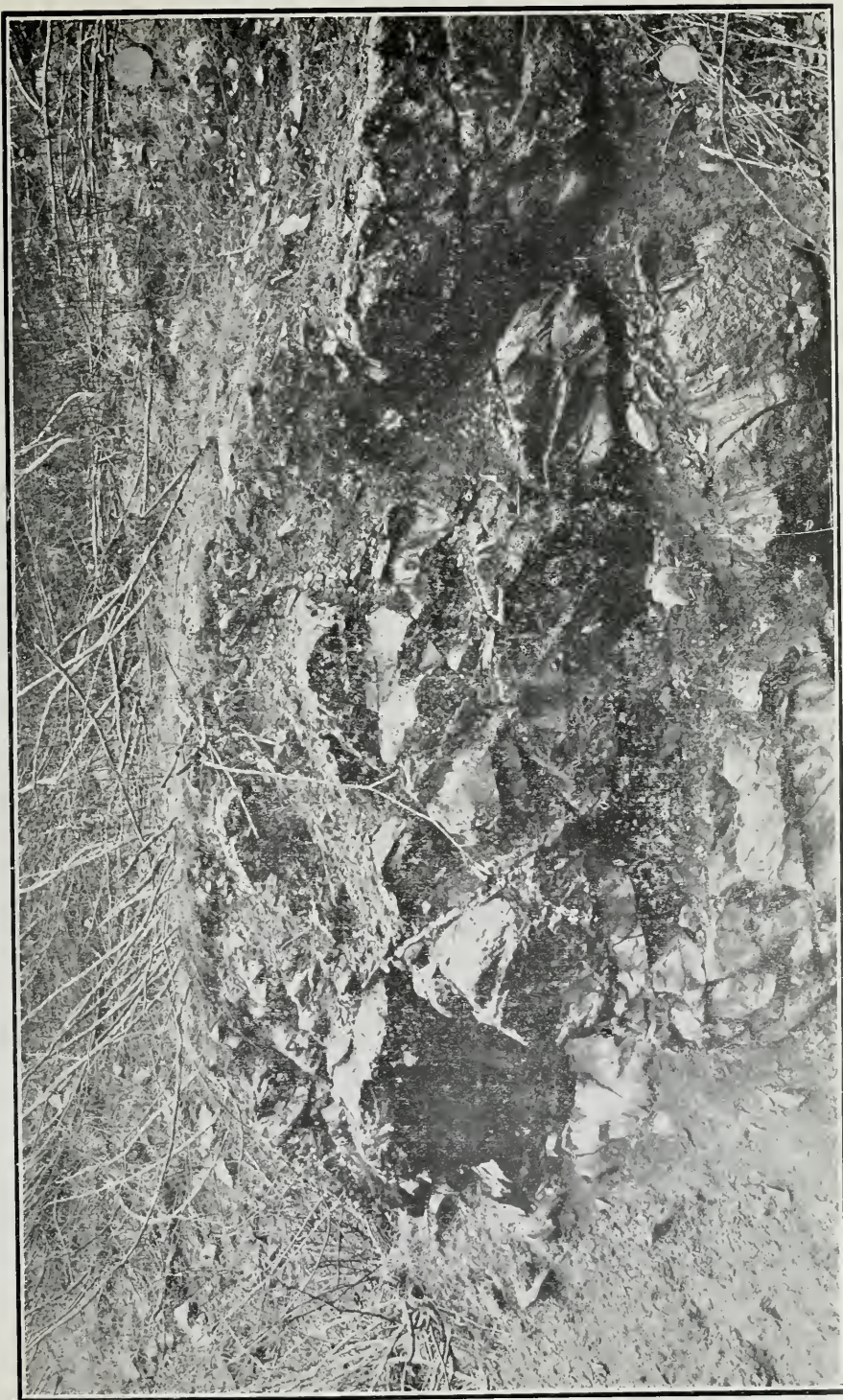


GEOLOGIC SKETCH MAP OF UPPER PART OF GOLD CREEK

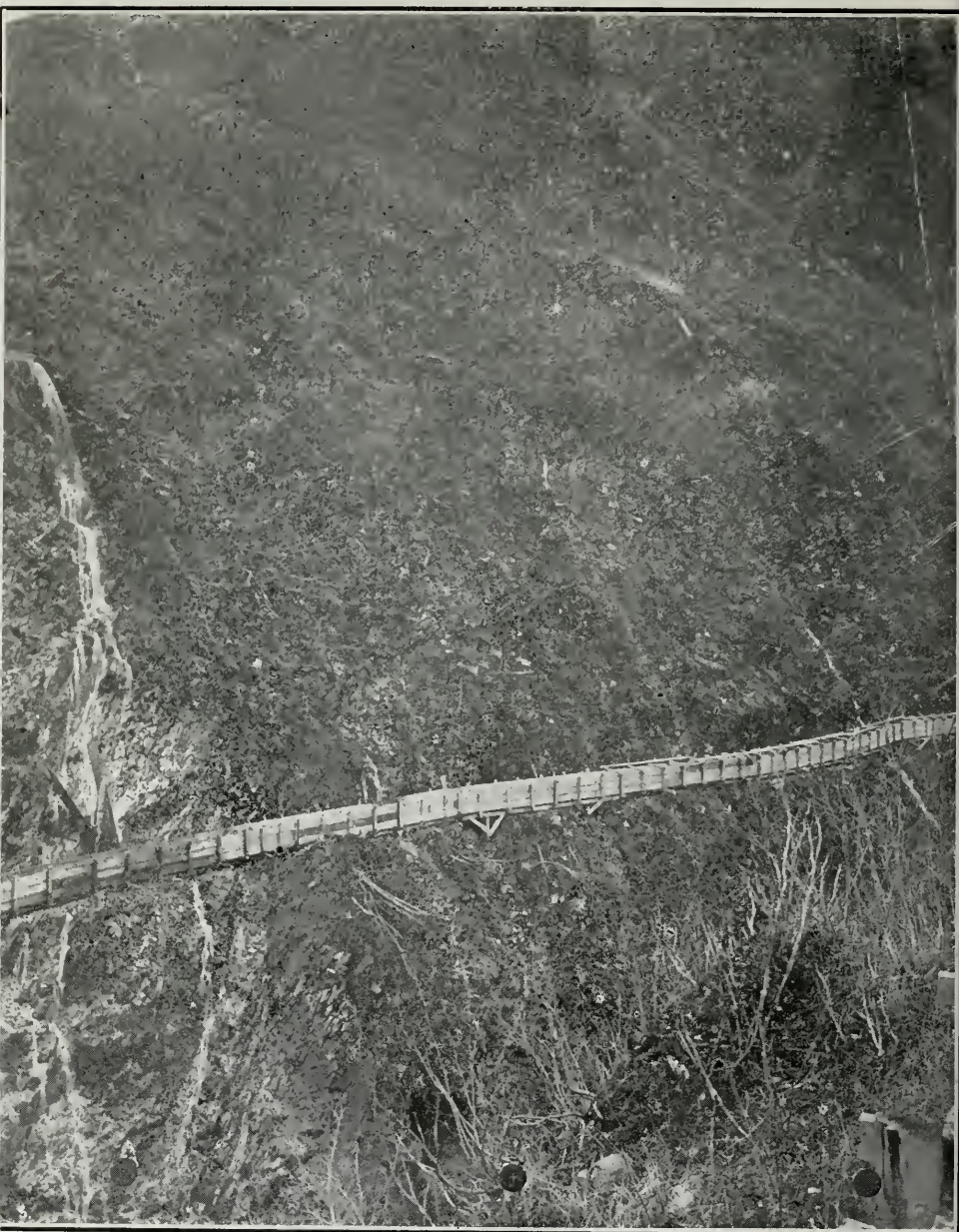
JULIUS BIER & CO. LITH. N. Y.



[Plaintiff's Exhibit "PP."]



[Plaintiff's Exhibit "M" for Identification.]



Shows Tunnels—Upper and Lower.

Alaska-Juneau Gold Mining Company. 1855

[Plaintiff's Exhibit "QQ."]



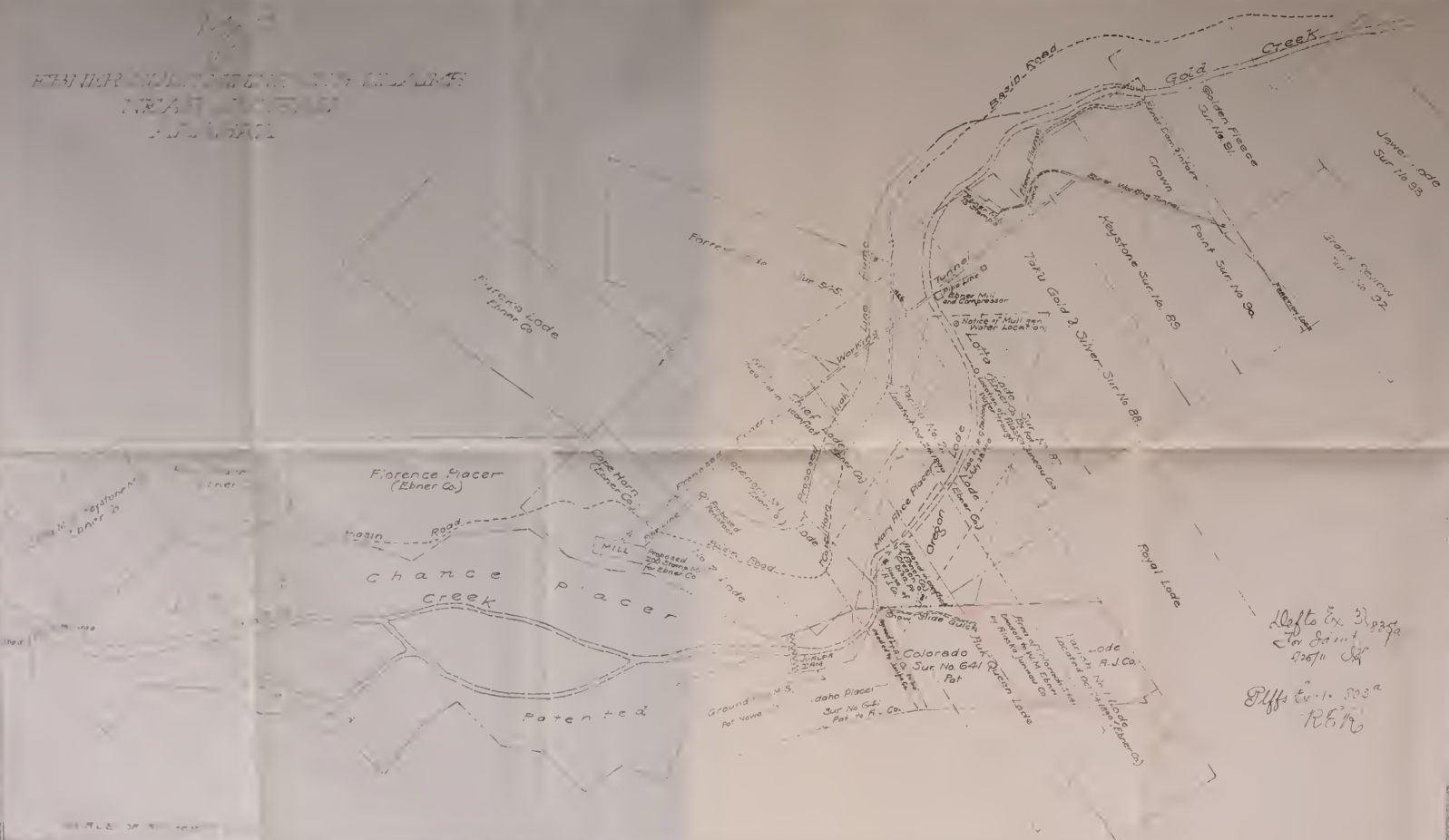


Alaska-Juneau Gold Mining Company. 1857

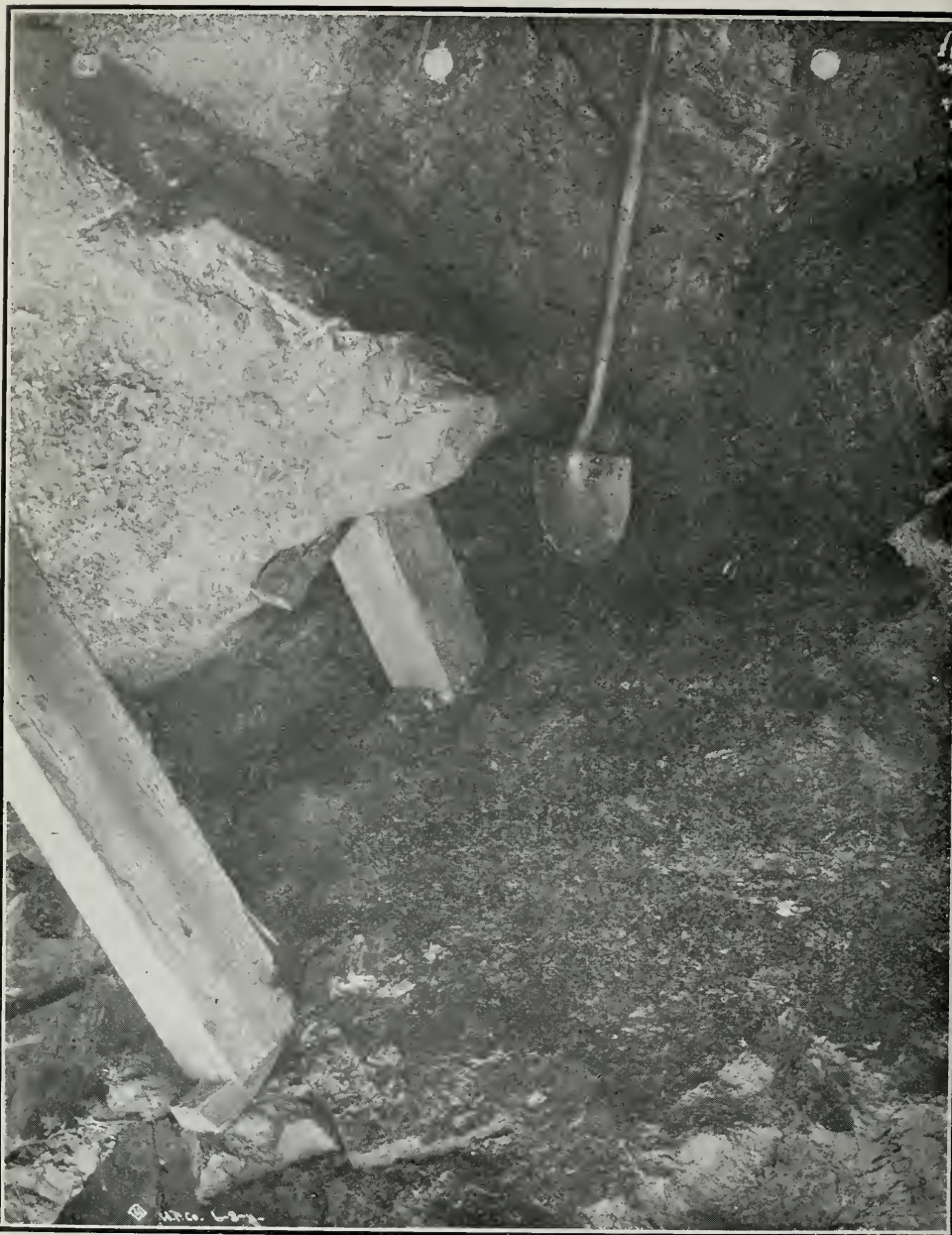




MINING CLAIMS
NEAR
FLORENCE









[**Deed Dated March 10, 1909—Alaska—Juneau Gold Mining Company to Ebner Gold Mining Company.**]

THIS INDENTURE, made this 10th day of March, in the year of our Lord One Thousand Nine Hundred and Nine, between the ALASKA JUNEAU GOLD MINING COMPANY, a corporation organized and existing under and by virtue of the laws of the State of West Virginia, and doing business in the District of Alaska, the party of the first part, and the EBNER GOLD MINING COMPANY, a corporation organized and existing under and by virtue of the laws of the District of Alaska, the party of the second part,

WITNESSETH

That, Whereas, by a certain Contract and Agreement made and entered into by and between the parties herein, of date 25th day of April, A. D. 1905, wherein and whereby the party of the first part herein agreed to convey all of that portion of the Colorado Lode Mining Claim in conflict with the Parish Lode Mining Claim (which conflict is hereinafter fully described) upon receiving United States patent to said Colorado Lode Mining Claim, to the party of the second part herein, in consideration of said party of the second part herein dismissing and withdrawing a certain adverse suit which it had filed against the application of the party of the first part herein for a patent to the Colorado Lode Mining Claim, and in which adverse, so filed as aforesaid, the said Ebner Gold Mining Company, the party of the second part herein, claimed all that portion or parcel of said Colorado Lode Mining Claim in con-

flict with the said Parish Lode Mining Claim, the description of which conflict is the property in this deed conveyed to the said Ebner Gold Mining Company;

And Whereas the party of the first part herein has now obtained a patent for said Colorado Lode Mining Claim, including within its exterior boundary lines the conflict herein mentioned [1704] with the said Parish Lode Mining Claim.

NOW THEREFORE for and in consideration of the premises and the sum of \$1.00 to the party of the second part, receipt whereof is hereby acknowledged, the party of the first part hath granted, bargained, sold and conveyed, and by these presents doth grant, bargain, sell and convey unto the said party of the second part, its successors and assigns:

All the following described real estate situate in the District of Alaska, to-wit:

Commencing at corner number 6 Colorado Lode, Survey No. 641, whence corner number 5 Royal Lode bears North $33^{\circ} 45'$ West, 567.64 feet distant; thence South $33^{\circ} 43'$ West, 522.36 feet along lines 6-1 Colorado Lode to corner number 1 Colorado Lode; thence South $56^{\circ} 15'$ West, 86.30 feet along lines 1-2 Colorado Lode to corner number 2; thence South $41^{\circ} 15'$ East, 34.96 feet along lines 2-3 Colorado Lode to corner number 3; thence South 84° West, 585.64 feet along lines 3-4 Colorado Lode to point of intersection with Southwest side line of Parish No. 1 Lode; thence along Southwest side line of Parish No. 1 Lode North $33^{\circ} 45'$ West, 600 feet to point of intersection with northwest side line of Colorado Lode; thence along northwest side line of Colorado Lode

lines 5-6, North 84° East, 678 feet to corner No. 6 Colorado Lode and place of beginning, containing an area of eight and six-hundredths (8.06) acres.

All of said above described property being in the Harris Mining District, District of Alaska; together with all and singular the mines, minerals, lodes and veins (except as hereinafter reserved) within the lines of said above described conflict and their dips and spurs, and all improvements,

RESERVING, HOWEVER, to the said party of the first part a right to drive, occupy and use a tunnel through the ground so in conflict for the purpose of reaching and developing the mining properties belonging to said party of the first part.

ALSO RESERVING to the said party of the first part all those underground parts of veins underlying the surface of the tract hereby conveyed, the tops or apexes of which are outside of said conveyed premises, and within the boundaries of lode mining claims now owned or possessed by said party of the first part. [1705]

IN WITNESS WHEREOF the said party of the first part hath hereunto caused its corporate name and seal to be affixed the

10th day of March, 1909.

ALASKA-JUNEAU GOLD MINING CO.

By F. N. BRADLEY,

President.

[Seal] Attest: JOSEPH H. MOOSER,

Secretary. [1706]

State of California,

City and County San Francisco,—ss.

This is to certify that on this 10th day of March,

1909, before me, the undersigned, a Notary Public in and for said City and County duly commissioned and sworn, that F. N. BRADLEY, President, and JOSEPH H. MOOSER, Secretary, of the within named Corporation who are personally known to me to be such President and Secretary, respectively, of said Corporation, personally appeared before me this day, and acknowledged the within and foregoing Warranty Deed to be their free and voluntary act and deed, and the free and voluntary act and deed of said Corporation.

Witness my hand and official seal this 10th day of March, A. D. 1909.

[Seal]

JOHN R. TYRRELL,

Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]:

District of Alaska,
Juneau,—ss.

The within instrument was filed for record at 3 o'clock P. M. March 20, 1909, and duly recorded in book 22 of Deeds on page 182 of the records of said District.

H. H. FOLSOM,
District Recorder. [1707]

**[Resolution Authorizing President and Secretary of
Alaska-Juneau Gold Mining Company to Exe-
cute Deed to Ebner Gold Mining Company.]**

WHEREAS, by a certain Contract and Agree-
ment made and entered into by and between the
Alaska Juneau Gold Mining Company and the Ebner
Gold Mining Company, dated the 25th day of April,

A. D. 1905, wherein and whereby the former Company agreed to convey all that certain portion of the Colorado Lode Mining Claim in conflict with the Parish Lode Mining Claim upon receiving United States patent to said Colorado Lode Mining Claim, to the Ebner Gold Mining Company, as set forth in said Contract and Agreement, and

WHEREAS the Alaska Juneau Gold Mining Company has now obtained a patent for said Colorado Lode Mining Claim, including within its exterior boundary lines the conflict mentioned with the said Parish Lode Mining Claim, and

WHEREAS the Ebner Gold Mining Company has requested the Alaska Juneau Gold Mining Company to comply with the terms of said Contract and Agreement of April 25, 1905,

NOW THEREFORE, be it

RESOLVED that the President and Secretary of this Company, the Alaska Juneau Gold Mining Company, be and they hereby are authorized, empowered and directed to execute, in the name of this Corporation and deliver to the said EBNER GOLD MINING COMPANY, the said Deed as read to this Board of Directors, conveying Eight and six-hundredths (8.06) acres comprised in said Colorado Lode Mining Claim, and as per the terms and conditions of the Contract and Agreement of April 25, 1905, aforesaid.

I, Joseph H. Mooser, Secretary of the Alaska Juneau Gold Mining Company, do hereby certify that the above is a true, [1708] correct and full copy of Preamble and Resolution duly and regularly passed and adopted at a Meeting of the Board of

Directors of said Corporation, held on the 10th day of March, 1909.

WITNESS My hand and the Seal of the said Alaska Juneau Gold Mining Company, this 11th day of March, 1909.

[Seal] JOSEPH H. MOOSER,
Secretary Alaska Juneau Gold Mining Company.

[Endorsed]: 182.
District of Alaska,
Juneau,—ss.

The within instrument was filed for record at 3 o'clock P. M. March 20, 1909, and duly recorded in book 22 of Deeds on page 182 of the records of said District.

H. H. FOLSOM,
District Recorder. [1709]

[Contract and Agreement Dated April 25, 1905, Between Alaska-Juneau Gold Mining Company and Ebner Gold Mining Company.]

THIS CONTRACT and AGREEMENT made *an* entered into this 25th day of April, 1905, by and between the ALASKA JUNEAU GOLD MINING CO., party of the first part, and the EBNER GOLD MINING CO., party of the second part.

WITNESSETH:

THAT WHEREAS, the party of the first part has applied for a United States patent to that certain lode mining claim in the Harris Mining District, District of Alaska, at or near Snow Slide Gulch on Gold Creek about two miles from Juneau, known and designated as the Colorado Lode Claim; and whereas, said Colorado Lode Claim is in conflict with a certain lode claim known as the Parrish Lode

Claim, claimed by the said party of the second part. And the said party of the second part has filed its adverse claim and brought its adverse suit for the ground so in conflict, now therefore, in compromise and settlement of said litigation, it is hereby understood and agreed that the said party of the second part shall dismiss its said adverse suit and withdraw said adverse claim; that the party of the first part shall proceed with and prosecute to patent said patent proceedings, and when it shall have obtained a United States patent to the said Colorado Lode Claim, it shall make, execute and deliver to the party of the second part a deed conveying to it all the ground in conflict between said claims, reserving, however, to the said party of the first part a right to drive, occupy and use a tunnel through the ground so in conflict, or any portion of the said Parrish Lode Claim for the purpose of reaching and developing the mining properties [1710] belonging to the said party of the first part.

IN TESTIMONY WHEREOF, the parties hereto have hereunto affixed their corporate names in duplicate this the year and day first above written.

ALASKA-JUNEAU GOLD MINING CO.

[Seal]

By F. N. BRADLEY,

President.

By LOUIS H. MOOSER,

Asst. Secretary.

EBNER GOLD MINING CO.

By WM. M. EBNER,

President.

By B. M. BEHRENDTS,

[Endorsed]:

Secty.

District of Alaska,
Juneau,—ss.

The within instrument was filed for record at 10:09 A. M., Nov. 20, 1905, and duly recorded in book 18 of Agreements, on page 577 of the records of said District.

H. H. FOLSOM,
District Recorder. [1711]

[Defendant's Exhibit No. 8.]

Ebner Gold Mng. Co. vs. Alaska-Juneau Gold Mng.
Co.—835-A.

Defendant's Ex. 8, Being Page 99 of Ledger of
Ebner Gold Mng. Co.

Parish Lode.

1901.				1905.			
Jan.	31.	Development ..	167 7.75	Jan.	5.	Development ..	300 168.55
July	30.	W. M. Ebner...	188 16.25	Feb.	5.	"	303 200.
Sept.	30.	"	193 25.00	Oct.	22/06.	Balance....	1511.55
Dec.	31.	"	199 79.75				
	31.	Operating	200 11.80				
1903.							
Jany.	5.	Wm. M. Ebner..	223 28.00				
1905.							
Feb.	5.	B. M. B. B....	303 199.25				
		Mining	303 .75				
Apr.	5.	B. M. B. B....	310 13.50				
		"	310 10.				
Dec.	5.	Geo. Dull.....	347 25.00				
1905.							
Jany.	5.	B. M. B.....	352 40.00				
1906.							
July	5.	W. M. Ebner...	393 1.50				
Oct.	22.	Development ..	16 368.55				
"		Mining	16 1053.00				
			<hr/> 1880.10				
							<hr/> 1880.10
Oct.	22.	To Balance.....	1511.55				
Nov.	5.	Pay Roll.....	18 17.				
Dec.	5.	"	24 10.50				

[1712]

1870

Ebner Gold Mining Company vs.

*In the District Court for the District of Alaska,
Division No. One, at Juneau.*

No. 835-A.

EBNER GOLD MINING COMPANY, a Corporation,

Plaintiff,

vs.

ALASKA-JUNEAU GOLD MINING COMPANY, a Corporation,

Defendant.

Certificate [of Stenographer to Transcript of Testimony, etc.].

I do hereby certify that I am the official court stenographer for the Third Judicial Division, Territory of Alaska; that the Honorable Edward E. Cushman, the Judge before whom the trial of the above-entitled cause was had, was, at the time of the trial of said cause, and is now, the regular presiding judge of the Third Judicial Division; that he, the said Honorable Edward E. Cushman, occupied the bench of the First Judicial Division in the Territory of Alaska during the trial of the said above-entitled cause in place of Honorable Thomas R. Lyons, the regular judge of said First Judicial Division; that I reported the trial and proceedings in the above-entitled cause and that the foregoing is a full, true and correct transcript of all of the testimony and evidence introduced or offered at the trial of said cause, together with all of the exhibits on which the same was heard, excepting the rock that was offered in evidence.

Dated this 15th day of June, 1912.

I. HAMBURGER,

Alaska-Juneau Gold Mining Company. 1871

Filed in the District Court, Territory of Alaska,
Third Division. Jun. 15, 1912. Ed M. Lakin,
Clerk. By —————, Deputy. [1713]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 835-A.

EBNER GOLD MINING COMPANY, a Corpora-
tion,

Plaintiff,

vs.

ALASKA-JUNEAU GOLD MINING COM-
PANY, a Corporation,

Defendant.

Certificate and Order Settling Bill of Exceptions.

Now on this 15th day of June, 1912, and within the time allowed by this Court, the plaintiff herein presents to the Court this, his Bill of Exceptions herein, containing all the testimony and evidence introduced upon the trial of said cause, except certain exhibits of rock the originals of which have been ordered transmitted to the Court of Appeals, and prays that the same be allowed, filed and made a part of the record in this cause; and the Court being fully advised in the premises,

IT IS ORDERED that the foregoing Bill of Exceptions be, and the same is, hereby, allowed and settled, and the Clerk of the above-entitled Court ordered to file the same and the same is hereby made a part of the record in the foregoing entitled case.

1872 *Ebner Gold Mining Company vs.*

Done in open court this 15th day of June, A. D.
1912.

EDWARD E. CUSHMAN,

Judge.

Filed in the District Court, Territory of Alaska,
Third Division. Jun. 15, 1912. Ed M. Lakin,
Clerk. By ———, Deputy. [1714]

[Endorsed]: No. 835-A. In the District Court
for the District of Alaska, Division No. 1. Ebner
Gold Mining Co., a Corp., vs. Alaska-Juneau Gold
Mining Co., a Corp. Bill of Exceptions. Filed Jun.
18, 1912. E. W. Pettit, Clerk. By ———,
Deputy. [1715]

**[Minute Entry Re Certificate and Order Settling
Bill of Exceptions.]**

*In the District Court for the District of Alaska,
Division No. One, at Juneau.*

No. 835-A.

EBNER GOLD MINING COMPANY, a Corpora-
tion,

Plaintiff,

vs.

ALASKA-JUNEAU GOLD MINING COMPANY,
a Corporation,

Defendant.

ORDER.

The Court having signed an order herein on May
23, 1912, and the same having been entered herein,
which said order was made sustaining the objections
filed by the above-named defendant to an offered and
tendered Bill of Exceptions herein by the plaintiff,

on the ground and for the reason that said offered Bill of Exceptions did not contain all of the testimony and evidence in the above-entitled cause, and now on this 25th day of May, 1912, in open court, the attorneys for plaintiff being present, also the attorneys for the above-named defendant, and the attorneys for plaintiff announced that they had filed plaintiff's assignment of errors and had ordered from the official court stenographer, who reported the above-entitled cause, a full transcript of all the testimony and evidence herein and had served upon the attorneys for the defendant plaintiff's assignment of error as well as plaintiff's Petition for Writ of Error and the Writ of Error and Citation on Writ of Error, copy of a proposed Bond on Writ of Error and a copy of a proposed Certificate of the Court and Order Settling and Allowing the Bill of Exceptions herein, and the Court having allowed said writ of error and said petition and fixed the bond on said writ of error and signed the citation, the form of said undertaking or bond was submitted to the Court and said certificate and order [1716] settling and allowing the bill of exceptions and having been served upon the attorneys for the defendant and said form of bond or undertaking approved by the Court without any objection on the part of the attorneys for the defendant: It was then agreed in open court by and between the attorneys for plaintiff and attorneys for the defendant that upon the official court reporter having completed his transcript of all the testimony and evidence herein and presenting the same to the Court, that a certificate and order

allowing and settling said bill of exceptions could be signed by the Court without the presence of the attorneys representing the respective parties herein, and accordingly the attorneys for plaintiff submitted and lodged with the Court a certificate and order, after the same had been served upon the attorneys for the defendant, which said certificate was and is as follows:

*“In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 835-A.

EBNER GOLD MINING COMPANY, a Corpora-
tion,

Plaintiff,

vs.

ALASKA-JUNEAU GOLD MINING COMPANY,
a Corporation,

Defendant.

Certificate and Order Settling Bill of Exceptions.

Now on this —— day of ———, 1912, and within the time allowed by this Court, the plaintiff herein presents to the Court this, its Bill of Exceptions herein, containing all the testimony and evidence introduced upon the trial of said cause and prays that the same be allowed, filed and made a part of the record in this cause; and the Court being fully advised in the premises,

IT IS ORDERED that the foregoing Bill of Exceptions be, and the same is, hereby, allowed and settled, and the Clerk of the above-entitled Court ordered to file the same and the same is hereby made

Alaska-Juneau Gold Mining Company. 1875

a part of the record in the foregoing entitled case.

DONE in open court this — day of ———, A. D. 1912.

_____,
Judge.” [1717]

And the Court thereupon agreed upon the official court stenographer presenting to the Court a full, true and correct copy of all the testimony in evidence taken upon the trial of said cause, that the above certificate would be signed and attached thereto.

Done in open court this 15th day of June, 1912.

EDWARD E. CUSHMAN,
Judge.

Received copy of within June, 10th, 1912.

HELLENTHAL & HELLENTHAL.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Jun. 15, 1912. Ed. M. Lakin, Clerk. By ———, Deputy. Filed Jun. 18, 1912. E. W. Pettit, Clerk. By ———, Deputy. [1718]

*In the District Court for the District of Alaska,
Division No. One, at Juneau.*

No. 835-A.

EBNER GOLD MINING COMPANY, a Corporation,

Plaintiff,

vs.

ALASKA-JUNEAU GOLD MINING COMPANY, a Corporation,

Defendant.

Motion [to Make Certain Papers and Exhibits Part of Record and Bill of Exceptions].

Comes now the above-named plaintiff, by its attorneys, Winn & Burton, and moves the Court to make part of the record and Bill of Exceptions in the above-entitled cause, the following papers and exhibits offered in evidence at the trial of said above-entitled cause, to wit, viz.:

Plaintiff's Exhibits "N," "M," "QQ," "PP"; also Location Notice Parrish No. 2, Deed of said Parrish No. 2 from Wm. M. Ebner to Ebner Gold Mining Company; Contract, Deed and Resolution in re conflict Parrish No. 1 with Colorado Lode; Answer and Oral Opinion in Cause No. 803-A; also copy of page 99 of the Ledger of the Ebner Gold Mining Company; all of which foregoing papers and exhibits were offered and admitted in evidence upon the trial of the above-entitled cause;

Also the following papers, viz.: Motion for New Trial; Findings of Fact and Conclusions of Law offered by the Plaintiff; Objection to Proposed Findings of Fact and Conclusions of Law offered and tendered by the Defendant; Objections and Exceptions to Findings and Conclusions made by the Court and Exceptions to refusal of Court to make Findings and Conclusions offered by the Plaintiff and to Modification of same by the Court.

Also Defendant's Exhibits, Nos. 3 (plat), 68, 70, 69, 21, 9 and 66.

WINN and BURTON,
Attorneys for Plaintiff.

Alaska-Juneau Gold Mining Company. 1877

Due service of a copy of the within Motion is admitted this 11 day of May, 1912.

HELLENTHAL & HELLENTHAL,

Attorney for Defendants. [1719]

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. May 23, 1912. Ed M. Lakin, Clerk. By ———, Deputy. Filed Jun. 3, 1912. E. W. Pettit, Clerk. By ———, Deputy. [1720]

*In the District Court for the District of Alaska,
Division No. One, at Juneau.*

No. 835-A.

EBNER GOLD MINING COMPANY, a Corporation,

Plaintiff,

vs.

ALASKA-JUNEAU GOLD MINING COMPANY, a Corporation,

Defendant.

Praecipe [for Transcript of Record].

To the Clerk of the above-entitled Court:

Please prepare Transcript in the above-entitled cause on Writ of Error, consisting of the following papers, viz.:

1. Amended Complaint, filed May 8, 1911.
2. Answer to Amended Complaint, filed May 12, 1911.
3. Motion to Strike Certain Portions of Answer to Amended Complaint, filed May 15, 1911.

4. Ruling of Court on above motion; (123), filed May 15, 1911.
5. Demurrer of Plaintiff to Amended Complaint, filed May 16, 1911.
6. Order Overruling Above Demurrer, filed May 16, 1911.
7. Reply to Answer to Amended Complaint (not to include that portion of Reply stricken by drawing lines thru such stricken portions), filed May 19, 1911.
8. Order Granting Motion to Amend Complaint by Interlineation, filed May 3, 1911.
9. Order Allowing Complaint as Amended.
10. Order Showing Defendant Waives Defense of Another Action Pending, filed May 16, 1911.
11. Order Overruling Plaintiff's Demurrer to Defendant's Further Answer, filed May 16, 1911.
12. Order Dismissing Plaintiff's Third Cause of Action in Amended Complaint, filed May 24, 1911.
13. Order Showing Waiver of Trial by Jury, filed May 15, 1911.
14. Motion of Defendant to Amend Answer by Pleading Forfeiture, filed June 9, 1911.
[1721]
15. Order of Court Allowing Above Amendment, filed June 9, 1911.
16. Order of Court Denying Defendant's Proposed Tendered Findings, filed July 5, 1911, and Aug. 21, 1911.
17. Findings of Fact and Conclusions of Law Made by the Court, filed Aug. 21, 1911.

18. ~~Written Objections and Exceptions to Findings of Fact and Conclusions of Law Made by the Court, and the ruling thereon. Filed Oct. 17, 1911.~~
19. Judgment and Decree, filed July 5, 1911, and Aug. 21, 1911.
20. Order Transferring Files and Granting Time to File Bill of Exceptions (Jour. "H," p. 188), filed June 12, 1911.
21. Order Retransferring Papers from Clerk of District Court, Fairbanks, to Clerk of District Court at Juneau, filed Juneau, Aug. 21, 1911.
22. Order (p. 61, Jour.) Granting Additional Time File Bill of Exceptions, filed Oct. 18, 1911.
23. Order (p. 145, Jour.) Extending Time File Bill of Exceptions, filed Feb. 10, 1912.
24. Order (p. 277, Jour.) Extending Time File Bill of Exceptions, filed May 1, 1912.
25. Last Order Extending Time File Bill of Exceptions, filed May 28, 1912.
26. Motion and Request of Plaintiff to Forward Certain Exhibits.
27. Order Made May 23, 1912, by Judge Cushman Refusing to Sign Bill of Exceptions Presented.
28. Affidavit of John R. Winn that the Value of Property in Controversy is Worth Over \$500.
29. Defendant's Objections to Signing and Certifying Bill of Exceptions.
30. Order of Court Making Certain Exhibits Part of the Record and Directing Original Exhib-

its to be Forwarded to Clerk of Circuit Court of Appeals.

31. Assignment of Errors.
32. Petition for Writ of Error and Asking for Order Fixing Amount of Bond, and the Order of Court Attached Thereto.
33. Bond on Writ of Error.
34. Writ of Error and Allowing of Same by Court.
35. Citation on Writ of Error.
36. Order Extending Time to Make Return to Clerk of Circuit Court Under Citation Signed by Judge Cushman at Valdez.
37. Objections of Plaintiff to Proposed Findings of Fact and Conclusions of Law Tendered by the Defendant.
38. Bill of Exceptions as Settled and Allowed by the Court. [1722]
39. Order Made and Signed by Judge Cushman June 15, 1912, Showing Proceedings in this Cause at Valdez.
40. Motion of Plaintiff Asking that Certain Exhibits be Made Part of the Bill of Exceptions, filed May 23, 1912.

WINN and BURTON,
Attorneys for Plaintiff.

[Endorsed]: Filed Jun. 20, 1912. E. W. Pettit,
Clerk. By J. J. Clarke, Deputy. [1723]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 835-A.

EBNER GOLD MINING COMPANY, a Corporation,

Plaintiff and Plaintiff in Error,

vs.

ALASKA-JUNEAU GOLD MINING COMPANY, a Corporation,

Defendant and Defendant in Error.

**Certificate [of Clerk U. S. District Court to Record,
etc.].**

I, E. W. Pettit, Clerk of the District Court for the District of Alaska, Division Number One, do hereby CERTIFY that the foregoing and hereto attached seventeen hundred and twenty-three pages of type-written and other matter, numbered from one to seventeen hundred and twenty-three, both inclusive, together with one certain canvass sack containing exhibits of rock, constitute a full, true and correct copy of the record, and the whole thereof, prepared in accordance with the praecipe of the plaintiff and plaintiff in error, on file in my office and made a part hereof, in Cause No. 835-A of the above-entitled court, wherein the Ebner Gold Mining Company, a corporation, is plaintiff and plaintiff in error and the Alaska-Juneau Gold Mining Company, a corporation, is defendant and defendant in error. I do FURTHER CERTIFY that the said record is by virtue of writ of error and citation issued in this

cause, and the return thereof in accordance therewith.

I FURTHER CERTIFY that this transcript was prepared by me in my office, and that the costs of preparation, examination and certificate, amounting to seven hundred twenty-eight and 10/100 (\$728.10) dollars, have been paid to me by John R. Winn, Esq., Attorney for Plaintiff and Plaintiff in Error.

In witness whereof I have hereunto set my hand and affixed the seal of the above-entitled court this 22d day of June, 1912.

[Seal]

E. W. PETTIT,
Clerk. [1724]

[Endorsed]: No. 2155. United States Circuit Court of Appeals for the Ninth Circuit. Ebner Gold Mining Company, a Corporation, Plaintiff in Error, vs. Alaska-Juneau Gold Mining Company, a Corporation, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the District of Alaska, Division No. 1.

Filed July 1, 1912.

FRANK D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.